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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1992

Addendum

HONDURAS

[11 May 1993]

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INTRODUCTION

1. The Government of the Republic of Honduras, in fulfilment of the commitment it assumed, as a State party to the Convention on the Rights of the Child, under article 44, paragraphs 1 and 2, to implement part I of the said Convention, which was constitutionally approved and ratified by Decree No. 75-90, promulgated by the National Congress on 24 July 1990, has pleasure in submitting to the Committee its initial report on such implementation, having endeavoured in the preparation of the report to conform to the General Guidelines approved by the Committee at the 22nd meeting of its first session on 15 October 1991.

2. By the submission of this initial report, the Government of the Republic of Honduras is attempting not only to carry out the simple formality of reporting (a) on existing measures, (b) on measures that have been adopted, (c) on the progress made, and (d) on the obstacles that have so far been encountered in the advance towards the concrete realization by means of practical actions and policies of the provisions of the Convention, but also to reaffirm its commitment to respect and enforce the rights established therein and thus to maintain an ongoing dialogue between Honduras - as a State party - and the Committee.

I. GENERAL MEASURES TO IMPLEMENT THE CONVENTION

A. Measures adopted to bring national legislation and policy into line with the provisions of the Convention

3. As regards the measures adopted by the Honduran State to harmonize national laws, policies and strategies with the requirements of the International Convention on the Rights of the Child, an international legal instrument that defines and contains the minimum rights that a society must guarantee to children without any discrimination, a start has been made with publicizing and promoting the Convention among the official and private institutions responsible for and concerned with the integral protection of childhood. In addition, a joint effort has been made by governmental and non-governmental organizations to implement as far as possible certain strategies, whose incorporation in the work of all those dealing with children will, to the extent that they are gradually assimilated, help to determine the relevant policies.

4. These strategies are now at an experimental stage in the hope that a systematic definition and uniformity can be achieved. However, what is currently most determinant, topical, urgent and relevant is agreed action by the Government and society whereby both sectors are involved in the process of concertation and approval of a National Plan for the Adaptation of Honduran Legislation to the Convention on the Rights of the Child. This national action is being carried out with the cooperation of international non-governmental organizations and the well-known technical and financial assistance of UNICEF.

5. It is important to mention that, if the needs of children are to be met, provision must always be made for the participation of all sectors of Honduran society in the process. Consequently, success in implementing the National Plan will require their involvement in its preparation. Thus, the following organizations participated, on the Government side, in the first working session to design the Plan: the Executive Secretariat of the Social Cabinet attached to

the Office of the President of the Republic, the National Social Welfare Board, the Ministry of Education, the Ministry of Health, the Ministry of Labour and Social Security, the Second Family Court, the Honduran Institute for the Rehabilitation of the Handicapped (IHRM), the Tegucigalpa Juvenile Court and the Honduran Institute for the Prevention of Alcoholism and Drug Addiction (IHADFA). The private sector was represented by the Catholic Church, the Evangelical Church and a wide range of non-governmental organizations (NGOs) dedicated to the defence of human rights and the rights of the child.

6. As a result of the participation of the NGOs, it was possible to hear the views of an institutionalized child who fully recognized the good intentions of the efforts being made on behalf of children in irregular situations, but also pointed out aspects of the custodial institutions that needed remedying.

7. The National Plan for the Adaptation of Honduran Legislation to the Convention on the Rights of the Child, which had been conceived as a result of the political will of the President of the Republic and which will be submitted to him for his approval, includes a proposal for the establishment of a National Commission on the Rights of the Child, to be set up initially by the Government and the NGOs, without ruling out the inclusion of other sectors representative of society since it is intended to be fully participatory in nature.

8. Through this National Plan, the Government proposes to prepare for legislation a Minors Code that will be in keeping with the Convention on the Rights of the Child by means of the following stages:

(a) A complete diagnosis of the situation of children's rights in Honduras;

(b) Draft proposals for the implementation of the Plan, with full institutional and community participation and with particular regard for children's views;

(c) Preparation of the bill containing the Minors Code for submission by the President of the Republic to the National Congress for debate and approval within a period of not more than one year; and

(d) The National Commission on the Rights of the Child will be organizationally structured to carry out all the work described above and to continue, as an inter-institutional body, to follow up and monitor the effective application of the provisions of the Minors Code and other provisions of various kinds needed for the protection of the child.

9. Once the Code has come into force, and the Government intends that this should occur on 10 September 1993 next, the date on which the Day of the Child is celebrated in Honduras, a major step forward will have been taken towards fulfilment of the commitment made at the World Summit for Children, held at United Nations Headquarters, New York, on 30 September 1990, as contained in paragraph 20, subparagraph (1), of the World Declaration on the Survival, Protection and Development of Children in the 1990s. We can assure you, without any shadow of doubt, that the motivation exists to carry out this first task, since we shall thereby be endowing the child with an integrated and coordinated set of legal provisions that will not only guide, direct and sensitize Honduran society and the State concerning the protection they are obliged to afford to the child but will also constitute the legal instrument needed to require the implementation of his or her rights.

10. Quite recently, in an endeavour to come closer to the provisions of article 21 of the Convention, amendments to articles 120, 123, 157, 174 and 175 of the Family Code were approved by the National Congress on 8 September 1992. As a result of these reforms, the National Social Welfare Board has become the central authority in the matter of adoptions with regard to the technical and administrative procedures before and after the legal process, i.e. before the persons concerned appear in the Family Court in question and after the order has been made which formally authorizes the adoption.

11. Another complementary action that will be very useful for the implementation of the Convention on the Rights of the Child during the interim period until the date on which the Minors Code enters into force is the Compilation of Normative Texts, which specifically contains all the legal provisions concerning children that are dispersed throughout the country's various laws. This document will assist Honduran society in general, the NGOs dedicated to the promotion and defence of the rights of the child and, more especially, parents and teachers who, being uninformed in matters of law, have difficulty in seeking out the legal foundations on which they can base themselves to defend children's rights. This useful document has been produced by the joint efforts of the Tegucigalpa Juvenile Court and UNICEF.

B. Existing and planned mechanisms and measures at the national and local levels to coordinate policies and monitor the implementation of the Convention

12. As regards mechanisms - practical measures - at the national and local levels for the coordination, follow-up and appraisal of the application of the Convention, we regret to inform you that neither at the government-institution level, nor at the NGO level, nor at the joint Government-NGO level is there any coordination, verification or monitoring which would enable us to follow up the application of the Convention so as to determine what progress has been made.

13. In 1990, as UNICEF-Honduras is aware, a joint effort was made by government organs and NGOs to set up an Inter-institutional Committee on Minors in Irregular Situations (COIMSI). This action was taken by the National Social Welfare Board and the Directorate General of Social Security - an executing unit of the Department of Labour and Social Security - in the context of what was called the "Programme for the Care of Minors in Irregular Situations" - abandoned or exploited children and children at risk. This Committee was to have been a coordinating and controlling unit for the activities of its various constituent institutions in implementing the Convention with respect to children in the category in question. This comprises minors in critical situations, a group made up not only of "street children" but also of those who, while remaining at home, are still in a critical situation, and minors at risk, including "street children" who, to assist their families, go out to the street, some to work and some to beg.

14. This Programme, which was aimed not at all children but at those in the most urgent need of care, contains a general objective, two specific objectives, the definition of policies with their respective strategies, the indication of quantified goals (including the population goal), with the description of the respective activities scheduled for the short, medium and long terms. The document has been published and, although it was not possible to implement it at that time for various reasons, the initiative has, in a way, produced an echo in that it gave rise to the application of the first programme of care for minors

in irregular situations and, subsequently, to the creation of the Minors Division within the National Social Welfare Board.

C. Measures to publicize the contents of the Convention

15. The most recent publicity measure to promote the Convention was the instructive children's ceremony which took place in the assembly hall of the National Congress on 8 and 9 September 1992. A total of 54 children from primary schools throughout the country, selected from the most outstanding pupils, pretended to be members of the Honduran legislative chamber and devoted themselves to passing laws in favour of their rights on the lines of the Convention. Quite apart from the fact that the ceremony itself constituted circulation of the Convention among the children taking part, it was publicized by all the country's communication media: press, radio and television. Under the auspices of the Ministry of Education, the National Social Welfare Board, the Patronato Nacional de la Infancía and UNICEF, the event was advertised under the name of "Legislating for the Children and Youth of Honduras".

16. Here we should mention the actions along these lines which have been carried out by government bodies and NGOs connected with this area of priority in social and human terms. We must not overlook either the contribution of private enterprise by sponsoring campaigns to promote and publicize the rights of the child through the various media.

17. The Government of the Republic, in a joint effort with society in general and systematically seeking financial assistance from the banking, industrial, commercial and other sectors, proposes to reproduce the Convention on the Rights of the Child in a more illustrative form that will be more intelligible to children and to distribute it among the pupils of the primary and secondary schools throughout the country so that they may become aware of its contents, inasmuch as they are the persons who will benefit from its provisions.

D. Measures to circulate the report to the general public in Honduras

18. As regards this commitment of the Honduran State, this report is not so far known to any sector but, once completed, it will be reproduced and a copy will be remitted to each government body, non-governmental organization and other sector of society connected with children. In order to fulfil its obligation under article 44, paragraph 6, of the Convention on the Rights of the Child, the Government proposes to circulate this report widely throughout the entire Honduran society and, to that end, as many copies as possible will be printed for distribution to all sectors of the country. The official presentation of the report to the Honduran people will take place at a special ceremony, with full publicity coverage by all the communication media.

19. In connection with this commitment, we are relying on a formal promise made by the UNICEF-Honduras Programme for Children in Especially Difficult Circumstances to publish this report and to hand over an appreciable number of copies for distribution in the strategic institutions, places and circumstances of the country. In order to carry out this essential task, the Government will request the collaboration and sponsorship of the social communication media, in the hope that they will lend technical and financial support to the publicity campaign, stressing the causes, circumstances and conditions that make it difficult to implement the provisions of the Convention, so as to take the

opportunity to sensitize society in general to the fact that the protection of children is one of everybody's duties and that, consequently, the assistance of the entire Honduran people is needed.

II. DEFINITION OF THE CHILD

20. In Honduran legislation, there is no provision that states in a special way what is meant by a child. However, our regulations do not leave gaps in that regard since, in accordance with the various matters covered by law, the legislature has established the contexts regarding the ages of the subjects of the Honduran State. From these we can deduce the legal interpretation of the concept "child". Thus, interpreting Honduran law, we can distinguish three concepts, namely: (a) minor, (b) citizen and (c) child.

21. In the light of article 16 of the Family Code, which provides that majority is attained at the age of 21 years, it may be inferred that the status of minor is retained in Honduras until the age of 21 years. According, however, to article 36 of the Constitution, all Hondurans over 18 years of age are citizens. This means that the quality of citizen is attained while a person is still a minor, thus involving the assumption of the status of minor adult. The latter contracts all the obligations of persons of full age and acquires the specific rights that are reserved for such persons, with a few exceptions that will be indicated below.

22. It follows from the above that the concept of "child" embraces all Hondurans under 18 years of age.

23. The secondary legislation, more particularly the acts relating to civil, commercial, labour, criminal and agrarian matters, contains specific provisions referring to the age of minors as subjects of the law. Thus, in civil matters, legislation takes account of the institutions of parental authority and guardianship and of the forms of emancipation and coming of age which are linked strictu sensu with the custody and care of minors as regards their persons and their property, as a function of the biological age and of the legitimate and/or legal age. In this connection, the following is the situation:

(a) As regards parental authority:

(i) Parental authority is the legal institution whereby a set of duties are imposed on the parents and certain rights conferred upon them with regard to the persons and property of their minor children;

(ii) Parental authority carries with it the exercise of guardianship and care, the obligation to sustain, care for and educate the minor and administer his or her property;

(iii) As regards the administration of the minor's property, exception is made for any goods inherited by or bequeathed or donated to the minor, if so provided by the testator or donor, with the provision that, in view of his or her status as a minor, a special guardian will be appointed for their administration;

(iv) A minor child who is authorized by the law to work is able, as if he or she were of full age, to administer and dispose of any goods he or she acquires by his or her work;

(v) For the greater protection of the minor, parental authority is exercized by both parents, except in the circumstances prescribed by the law;

(vi) Where the parents are minors, the property of the children shall be administered by the person who has the parental authority over or guardianship of the parents;

(vii) When their children reach the age of majority, the parents are bound to hand over to them the goods appertaining to them and to give an account of their administration; and

(viii) The parental authority becomes extinguished inter alia when the child reaches the age of majority, when the child marries, as a result of emancipation, or when the child comes of age;

(b) As regards guardianship:

(i) If the minor is not under parental authority, he is subject to guardianship for the care of his or her person and property;

(ii) The legal institution of guardianship establishes the guardian/ward relationship whereby the former is also the legal representative of the latter;

(iii) Minors who have not come of age are subject to guardianship;

(iv) Once the ward has reached the age of 16 years, the guardian must associate him or her with the administration of the property for his or her information and enlightenment; and

(v) In the event that no guardian has been appointed by will, the ward has the right to propose a candidate from among his or her relatives capable of statutory guardianship and, in the absence of such relatives, a person of recognized standing and respectability to exercise the legal guardianship;

(c) As regards emancipation:

(i) Emancipation is an event that puts an end to parental authority and which can be voluntary, statutory or by operation of law;

(ii) Voluntary emancipation is a bilateral action whereby the father declares that his son or daughter is emancipated and the son or daughter accepts emancipation but, for this to be valid, the minor must have attained 18 years of age;

(iii) The minor acquires statutory emancipation as a result of his or her father's actual death, the declaration of his or her father's presumed death, his or her own marriage, or the fact of attaining the age of 21 years;

(iv) The minor is emancipated by operation of law in the following cases: if he or she is habitually ill-treated by his or her father to the extent of being in danger of serious harm or death, if abandoned by his or her parents, if the father is too depraved to exercise parental authority or if the father has been found guilty of an offence and sentenced to rigorous imprisonment or long-term ordinary imprisonment; and

(v) Once a minor has been legally emancipated, the emancipation is irrevocable;

(d) As regards coming of age:

(i) Coming of age is a privilege accorded by the law to a minor to enable him or her to execute all the judicial and extra-judicial acts and contract the obligations of which persons over 21 years of age are capable, except those acts and obligations of which the law declares him or her incapable;

(ii) Married persons who are minors are legally empowered to come of age once they reach 18 years of age;

(iii) Children of any age who have not been emancipated - children in families, and persons under 18 years of age even if they have been emancipated, cannot be legally empowered to come of age;

(iv) In accordance with the above legal provision, to be legally empowered to come of age, it is necessary to be emancipated and over 18 years of age;

(v) A judge cannot empower a minor to come of age without hearing the views of his or her relatives, of his or her guardian and of the Government Procurator's Department;

(vi) Coming of age puts an end to the guardianship of the minor;

(vii) Coming of age does not extend to political rights; and

(viii) A minor who has come of age is not entitled to alienate or mortgage his or her landed property or to approve the accounts of his or her guardian (tutor or curator), without prior judicial authorization;

(e) As regards ability to contract marriage:

(i) Despite the fact that free ability to contract marriage is conferred only on persons of full age - over 21 years of age - a male over 18 years of age and a female over 16 years of age can contract marriage, provided that permission has been granted in accordance with the law; and

(ii) In the case of persons under the ages referred to above who have contracted marriage without permission, the marriage shall be recognized without any need for an express declaration, if the

contracting parties have remained together for one month after the younger of them has reached the age of 16 years or if the female has become pregnant;

(f) As regards ability to sign contracts:

(i) Minors not yet capable of procreation - below the age of puberty - are, according to the Civil Code, absolutely incapable of signing contracts; their acts do not even produce natural obligations and they cannot give security; and

(ii) Minor adults - 18 to 21 years of age - are relatively incapable and their acts may have value in some circumstances and with respect to certain matters determined by the laws.

24. In commercial matters, the Commercial Code establishes that:

(a) Minors over 18 years of age - minor adults, who have been emancipated or have come of age, have the capacity to exercise commercial acts;

(b) Minors over 18 years of age - minor adults, who have not been emancipated, have the same capacity if they have been authorized to do so by their parents or guardians;

(c) While such authorization does not require judicial proceedings, it must always be recorded in a public document and entered in the Commercial Public Register; and

(d) Tradesmen who are under 21 years of age but over 18 years of age - minor adults - are regarded as being of full age for the purpose of executing acts and carrying out any kind of commercial transaction, without being subject to the restrictions of the civil law.

25. As regards labour matters, the Labour Code provides as follows:

(a) Persons who have reached the age of 16 years have the capacity to conclude contracts of employment;

(b) Persons under 14 years of age and those who, having reached that age, are still subject to compulsory education may not be employed in work of any kind;

(c) Such persons may, in accordance with the law, be authorized to work if it is essential that they should do so for their own subsistence and that of their families, and provided that such work does not prevent them from receiving the minimum of primary education;

(d) Persons under 16 years of age may work only during the day, for 6 hours per day and 30 hours per week, without reduction of their wages; and

(e) The Ministry of Labour and Social Security is forbidden by law to authorize contracts of employment whereby Hondurans who are not of full age would work abroad.

26. The Agrarian Reform Act, the Modernization of Agriculture Act and the regulations appertaining thereto provide that persons over 16 years of age have the status of adults on terms similar to those of the labour regime.

27. As for criminal matters, the Honduran Criminal Code and the Minors (Jurisdiction) Act provide that:

(a) A person under 12 years of age is not imputable, i.e. is exempt from any criminal liability on the grounds of being an infant; and

(b) Persons between the ages of 12 and 18 years, who engage in actions or omissions punishable by law, shall be subjected to a special regime in accordance with the provisions of the Minors (Jurisdiction) Act.

28. As regards travel abroad, the law provides that no person under age is to be issued a passport or granted a visa, exit pass, safe-conduct or any document enabling him or her to leave the country without the express consent of both parents. This provision includes persons who have already achieved the status of citizens on reaching the age of 18, since we Hondurans enjoy the right of freedom of movement, in its full and direct form, only from the age of 21.

III. GENERAL PRINCIPLES

A. Non-discrimination (article 2)

29. Honduras is a sovereign State, subject to the rule of law, constituted as a free, democratic and independent republic so as to ensure that its inhabitants enjoy justice, freedom, culture and economic and social welfare (article 1 of the Constitution). As such, Honduras is a State that respects the law as the sole guarantee of the full realization of the human person within the framework of justice, freedom, security, stability, pluralism, peace, representative democracy and the common weal. Inspired by these concepts, the Honduran legislature, after the preamble of Decree No. 131 containing the Constitution of the Republic which evokes the protection of God and the example of our founding fathers, then produced Title III entitled "On Declarations, Rights and Guarantees" which, in its first chapter, declares that:

(a) All men are born free and equal in rights;

(b) There are no privileged classes in Honduras;

(c) All Hondurans are equal before the law;

(d) All discrimination on account of race, sex or class or for any other reason harmful to human dignity is a punishable offence;

(e) The law shall establish the offences and punishments in respect of any violations of these declarations;

(f) The Constitution guarantees not only to Hondurans but also to foreigners resident in the country, among other rights, that of equality before the law and equal right to property;

(g) Laws, governmental provisions or any other order purporting to regulate the exercise of these rights may not diminish, restrict or distort them; and

(h) The declarations, rights and guarantees listed in the Constitution must not be interpreted as negating other unspecified rights, declarations and guarantees that emanate from sovereignty, from the republican, democratic and representative form of government and from human dignity. Honduras is a nation in which all activities fit into a framework of legality.

B. Best interests of the child (art. 3)

30. The universal legal rules on the protection of the child are contained in the Convention, an international legal instrument constituting a treaty that obliges the States parties to promote and secure its ratification and to encourage and guarantee its application by means of practical actions in favour of children. It has been law in Honduras since the publication of Decree No. 75-90 on 10 October 1990, whereby the Convention on the Rights of the Child was approved as a whole and in every one of its parts.

31. In view of the fact that, by the signature of its President, Honduras was one of the first 20 countries, within the concert of nations, to commit itself to giving children a better world, we cannot but reiterate in this report, and particularly in this section dealing with article 3 of the Convention on the best interests of the child, the promise to respect the commitment thus assumed, reaffirming our faith in that most important form of human potential - the child. Evidence of this is the task that we have recently set ourselves of promptly issuing the Minors Code. To this end, a start has been made with the preliminary legislative work of preparing a first draft of that set of standards which will be submitted to the National Congress for discussion and approval as soon as the time required for drafting a bill allows. It is hoped that, by 10 September 1993, the date on which the Day of the Child is celebrated in Honduras, we shall be able to present to the nation that legacy of justice which the children of Honduras have been seeking for so long.

32. In this work of preparing the bill containing the Minors Code, we are endeavouring not to omit any detail whose absence might detract from the integral shaping of the fundamental human rights in general and of the individual welfare which, in themselves, constitute the best interests of the child. To that end, the bill will include all the appropriate legislative, administrative and judicial measures required to ensure that Honduras, as a State party to the Convention, will have a legal instrument that directs and guarantees the genuine legal protection which, as a nation that respects human rights and meets its international commitments, it is obliged to accord to its children.

33. In deference to the provisions of article 3 of the Convention, the Government will, in all the measures it may adopt, give pride of place to the best interests of the child. Honduras thus commits itself to ensuring that children receive all the care and attention required for their well-being, without overlooking the duties and rights of their parents and of other persons responsible according to the law. It likewise commits itself, for the benefit of the best interests of the child, to ensuring that all institutions, services and establishments entrusted with the care and attention of children observe strictly the rules established by the authorities concerning health, education and safety. Such institutions must also include in their methodologies adequate systems of supervision so that children can be guaranteed an environment that offers them the chance of well-being and development.

C. The right to life, survival and development of the child (art. 6)

34. In this section, it should be recalled that article 119, second paragraph, of the Constitution declares that children shall enjoy the protection specified in the international agreements that watch over their rights. This declaration was made by the Honduran State eight years before it subscribed to the Convention on the Rights of the Child, i.e. prior to its international commitment. From this it may be inferred that, as a State party, Honduras will do its utmost to ensure the survival and development of the child.

35. In connection with the right to life, survival and development, the constituent legislature has made the following specific statements:

(a) Every child has the right to grow and develop in good health;

(b) For that purpose, special care must be given to the child and its mother from the prenatal period onwards. Such care includes the right to sustenance, housing, education, recreation and sports, and adequate medical services;

(c) The State shall offer special protection to minors whose parents are economically incapable of providing for their upbringing and development; and

(d) All else being equal in terms of suitability, parents or guardians in such circumstances shall enjoy preference for the filling of public offices.

D. Respect for the views of the child (art. 12)

36. As regards the rights conferred upon the child by article 12 of the Convention, namely, to express his or her own views freely and to be heard in any judicial and administrative proceedings affecting him or her, either directly or through a representative, there are no legislative, administrative or judicial rules to guarantee respect for the views of the child. However, among the future measures to be adopted to implement the provisions of the Convention, the regime to protect these rights will have priority in the National Plan for the Adaptation of Honduran Legislation to the Convention on the Rights of the Child. In this connection, careful regard will be given to the precocity and premature development of today's children and the fact that a failure to ask the child his or her views may have a negative effect, particularly on the definition of his or her personality.

37. Nevertheless, it might be useful to mention a case that came before the First Family Court of Tegucigalpa. The Judge in question, taking advantage of the wide margin of discretion accorded her by the law and applying the general legal principle that the law permits what it does not forbid, resolved a conflict that was before her concerning the custody of two girls aged 13 and 15 respectively. In view of the importance of ensuring that her decision was in the best interests of the children and the fact that it was difficult in the specific case to establish clearly the conditions and qualities of the two parents, she decided that there was no other means of clarifying the circumstances and criteria to be considered before issuing her verdict than to hear the persons directly affected - the girls themselves. Their views were formally received and recorded and, as a result, it proved possible to establish which of the parents should most appropriately be granted custody and care of them, which was so ordered. This was, in fact, a case in which the best

interests of the children concerned were catered for by applying the principle of respect for the views of the child.

IV. CIVIL RIGHTS AND FREEDOMS

A. Name and nationality (art. 7)

38. Honduras has legislative, judicial, administrative and other measures in force which pertain to these rights. Among the legislative measures, we have in order of priority the following rules.

39. Chapter I, "On the Hondurans", of Title II, "On Nationality and Citizenship", of the Constitution provides that:

(a) The State confers nationality even on a child of unknown parentage solely as a result of his or her being found in its territory;

(b) The legal protection of the State is such that it safeguards the right to nationality by establishing that neither marriage nor its dissolution shall affect the nationality of the spouses or of their children; and

(c) A person who is Honduran by birth shall recover his or her lost nationality by simply settling in the country and expressing the wish to recover it.

40. The National Registration of Persons Act, Title II, "On the Civil Register", chapter II, "On the Use of Personal Names", provides that:

(a) Every Honduran has a right to the first name or names and the surnames to which he or she is legally entitled and which must be entered in the Civil Register; and

(b) Usurpation of a name is a punishable offence.

Chapter III, "On the Registration of Births", of the same Title II provides that: registration of a child recently born to a mother without a helpmate and lacking economic resources is the ex officio responsibility of the municipal assistants, who must obtain the details of the birth.

41. The relevant legal provisions in force are also in keeping with the Convention in that they offer careful protection of the rights to a name and nationality and establish administrative and judicial systems guaranteeing the enforcement of these rights by recognizing that:

(a) Civil status is the position of an individual with regard to his or her family relationships;

(b) Birth, marriage, death and adoption are among the facts and actions that require registration;

(c) Entries in the registers, including ex officio entries, require the issue, at the same time and free of charge, of a Certificate of Registration;

(d) Once an entry has been made, no alteration of any kind may be made to it except by order of the court;

(e) If an entry has been omitted, only the competent judge can order its replacement, after examining the evidence and finding it sufficient; and

(f) In the event that documents of the Civil Register are destroyed or lost, the National Register of Persons shall replace them ex officio on the basis of the originals in its central archives.

B. Preservation of identity (art. 8)

42. Although the relevant Honduran legislation, the National Registration of Persons Act, contains in some of its chapters regulations designed to preserve and guarantee the right to identity which are quite acceptable, these do not succeed in being fully effective because the State institution responsible lacks qualified technical staff to carry out this important and essential public duty owing to its tiny budget.

43. As regards children in particular, there is no regulation in Honduran law to preserve their identity in a specific and unconditional way. The result is that there are large numbers of unidentified children. This means that they are civilly non-existent and thus deprived of their names and nationality.

C. Freedom of expression (art. 13)

44. As regards this fundamental human right, which is also included in the Universal Declaration of Human Rights, Honduras, as a free, sovereign and independent republic, concedes the general right to freedom in its Constitution, article 61 of which states that: "The Constitution guarantees to Hondurans and to foreigners resident in the country the right to ... freedom ... ." The right is conceded by the Honduran State in such a way that its enjoyment is restricted only by the rights of others and the protection of morality, public order and proper behaviour. This is so much the case that the Honduran Constitution goes on to state that:

(a) The rights of each person are limited only by the rights and safety of others and by the just requirements of the general welfare and democratic development;

(b) The declarations, rights and guarantees listed in the Constitution must not be interpreted as negating unspecified declarations, rights and guarantees that emanate from sovereignty, from the republican, democratic and representative form of government and from human dignity; and

(c) The general right to freedom is fully guaranteed from the legislative standpoint as expressed in articles 64 and 69, which read:

> "Laws, governmental provisions or orders which regulate the exercise of the declarations, rights and guarantees contained in this Constitution shall not apply if they diminish, restrict or distort them" and "Personal freedom is inviolable and may be restricted or temporarily suspended only in accordance with the law."

45. Derived from this right of each and every person, we find it specified in the Constitution that:

(a) The "right to freedom of expression" is identified in our legal terminology as the right to the free utterance of thought;

(b) The utterance of thought by any medium is free, without prior censorship;

(c) Those who abuse that right shall be answerable before the law;

(d) Anyone who, by any means, restricts or impedes the communication of ideas or opinions shall be answerable before the law; and

(e) The legislature is authorized, by the normal lawmaking procedure, to establish prior censorship but solely to protect the moral and cultural values of society and the rights of individuals, especially children, adolescents and young people.

46. So far we have been considering the primary legislation that applies in Honduras and, although it is not expressly stated that this right extends to children, it can be inferred that they are covered by these constitutional guarantees which apply to Hondurans and foreigners resident in the country. Logically, therefore, children do not cease to be Hondurans or resident foreigners just because they are children.

47. As regard the secondary legislation in force, the Utterance of Thought Act has been drafted by the legislature on the basis of the constitutional guarantees but developed in a more specific way. It contains provisions such as the following:

(a) No one may be persecuted or harassed for his or her opinions;

(b) The freedoms of expression, of thought and of information are inviolable;

(c) This right includes investigating and receiving, transmitting and disseminating information by any medium;

(d) No law that restricts this right shall be approved;

(e) Any inhabitant of the Republic may freely, without prior censorship, express his or her thoughts, give and receive information and discuss his or her views or those of other people, orally, in writing or in pictures (any inhabitant includes children); and

(f) The circulation of publications that have a tendency to undermine the State or the family or which encourage offences against persons or property shall not be permitted.

48. The Honduran Criminal Code contains the penalties for those who abuse the right to freedom of expression by violating morality, public order or proper behaviour or by offending against the dignity of other people, as well as for those who violate the right to free utterance of thought by limiting, restricting or distorting it.

49. Thus the Code provides that:

(a) Any official or employee who commits the offence of preventing the free circulation of printed matter, whose authors or editors have fulfilled the legal requirements for its publication, shall be punished by a fine and by general disqualification for a term of one to three years; and

(b) The director of a communication medium who refuses to publish free of charge material constituting the right of reply shall be punished with a term of imprisonment of 30 to 90 days or a fine; the same punishment shall be imposed on anyone who, by any medium of expression, discloses facts of private life which, without being offensive, can hurt the family of the person concerned and damage its image before public opinion.

50. At the level of Honduran secondary legislation, the right to freedom of expression is granted to children, since its provisions make use of the expressions: "every person" and "every inhabitant". Children are persons and inhabitants.

D. Access to appropriate information (art. 17)

51. As regards this right of access to appropriate information, as understood by the Convention and accepted by the States parties, the Constitution of the Republic in its chapter on the rights of the child prescribes that:

(a) The communication media must cooperate in the training and education of children (art. 125);

(b) The State communication media shall remain at the service of education and culture; and

(c) Private communication media are obliged to contribute to the attainment of these ends.

52. In practice, the Honduran State encounters restrictions on the fulfilment of these constitutional principles, mainly of a financial nature or caused by socio-economic factors that affect families and, consequently, children. In addition, the precepts lack the enforceability needed for their full legal effectiveness. Consequently, because the imperative "must" cannot be applied de facto and there has been no secondary legislation passed or regulations adopted to give the standard enforceability, it has not yet been implemented. The rights enshrined in the Constitution require, for their enjoyment and implementation, a means of making them applicable together with a sanction for their violation.

53. It will be concluded from the above that, although there is a legislative standard obliging the communication media to cooperate in the integral training of children, this exists purely at the declaratory level and not at the enforceable one. In these circumstances, as in others referred to in connection with these rights, it is both necessary and urgent for the future implementation of goals and priorities in the administrative, judicial and other areas to issue the Minors Code. The Executive Secretariat of the Social Cabinet is already working on this, with UNICEF financing, in the hope of producing a purpose-

oriented legal instrument that will involve the whole national commonalty in the task of protecting the child and assuring his or her social welfare.

E. Freedom of thought, conscience and religion (art. 14)

54. Since these three rights or public freedoms constitute a basic trinomial that is irreplaceable and essential if the child is to be guaranteed the training to which he or she is entitled as a human being in order to achieve his or her complete fulfilment, for his or her own sake and hence for the sake of the country, these rights are enshrined in the Constitution and implemented in the rules of our secondary or ordinary legislation.

55. As its preamble already makes sufficiently clear, the purpose of the Constitution is to promote the full development of the human person. Article 59 recognizes that the human person is the supreme end of society and of the State and that everyone has the duty to respect and protect it. Article 68 states that "Every person has the right to respect for ... his psychological and moral integrity".

56. Coinciding with article 14, paragraph 2, of the Convention, our Constitution guarantees to the parents the preferential right to choose the type of education for their children. Article 152 thus states that parents shall have the preferential right to select the kind of education to be given to their children.

57. Article 70 declares that:

(a) All Hondurans have the right to do anything which does not harm another person;

(b) No one may be obliged to do anything that is not legally prescribed;

(c) No one may be prevented from doing anything that is not prohibited by law; and

(d) No personal service is requirable or must be given free of charge, except by virtue of the law or of a verdict based on the law.

58. All the above legislative measures protect and guarantee freedom of conscience, with respect to individual identity, dignity and integrity and also, consequently, freedom of thought.

59. Reaffirming the guarantee that a child is free to profess his or her own religion, article 77 of the Constitution states that the free exercise of all religions and denominations is guaranteed, without any pre-eminence, provided that they do not contravene the laws and public order. Article 25 of the Organization of Education Act provides that religious instruction may be imparted to those children whose parents or representatives so request.

60. In connection with the freedom of thought, conscience and religion, the Criminal Code stigmatizes as offences any acts which violate these rights and establishes in that regard that:

(a) A term of three months' to two years' imprisonment shall be imposed on anyone who, without being legitimately authorized to do so, violently prevents

another from doing something which is not prohibited by law, or forces another to do something that he or she does not wish to do, whether this is right or wrong;

(b) Anyone who, by violent means, forces another to carry out a religious act or prevents him or her from participating in a religious ceremony, shall be punished by a term of imprisonment of three months to one year; and

(c) The same penalty shall be applied to anyone who, without justification, interrupts or prevents the celebration of a religious ceremony or function of any denomination that is permitted in the country.

F. Freedom of association and of peaceful assembly (art. 15)

61. The legislative measures that exist in Honduras to guarantee the implementation of these rights are in full accordance with the provisions of article 15 of the Convention. These rights are set out in articles 78 and 79 of the Constitution in which we find the following guarantees:

(a) Freedom of association and of assembly is guaranteed, provided it is not exercised contrary to public order and proper behaviour; and

(b) Every person has the right to assemble with others, peacefully and without arms, in demonstrations or transitory meetings in connection with common interests, no notice or special permission being required.

62. The right to freedom of association and peaceful assembly is also implemented by Honduran secondary legislation, in legal instruments such as the Civil Code, the Labour Code, the Cooperatives Act, the Commercial Code, the Agrarian Reform Act and the Modernization of Agriculture Act. In the case of the last two, this is also done in their respective regulations. The civil and commercial rules provide for the right of association to which children may have access either through their legal representatives - parents or guardians - or directly in person.

63. As regards labour law and the Cooperatives Act, children may enjoy this right from the age of 16 years if they are workers belonging to trade unions. As members of trade unions, they can become members or associates of the so-called trade-union cooperative plans. It is worth mentioning that the Cooperatives Act does not take account of the trade-union cooperative plans, on the assumption that the cooperative groupings of trade-union members will fall outside its regulations and be organized within the trade unions themselves under cover of the latter's legal personalities, and will be supervised through the "Cooperatives Office" in accordance with article 647, paragraph (f), of the Labour Code.

64. Although the right of freedom of association and of peaceful assembly is fully protected by law, there are in fact no associations consisting entirely of children. Public meetings of children and young people for sporting, recreational and artistic purposes are held and, perhaps, public demonstrations for civic purposes and purposes of common interest.

65. Some of the possible reasons why these rights are not implemented as effectively as might be required to the advantage of the integral welfare of the Honduran child are:

(a) The ignorance of the parents and representatives of the children and of the children themselves concerning the rights conferred upon them by legislation. This is due to the lack of publicity for the laws, which are published just once in La Gaceta, the official journal, and then only to fulfil the requirement of the lawmaking process, and

(b) The lack of clearly-defined and determinant policies and strategies.

66. Apart from the legislative measures mentioned above, there are no other measures connected with these rights and no priorities or aims are being developed for the future.

G. Protection of privacy, family, home, correspondence, honour and reputation (art. 16)

67. There are legislative, judicial and administrative measures in Honduras relating to this right. In its Title III, "On Declarations, Rights and Guarantees", the Constitution declares that:

(a) The right to honour, personal privacy, the family and one's own image is guaranteed;

(b) The home is inviolable; and

(c) The inviolability and secrecy of postal, telegraph and telephone communications is guaranteed, unless there is a court order.

68. The zeal of our law in defence of private life is such that the last paragraph of article 100 of the Constitution provides that, even if communications have to be intercepted by an action of the authorities, the secrecy of strictly private matters which are not connected with the purpose of the legal action in question shall still be preserved.

69. The secondary legislation - Criminal Code - establishes the penalties for those who commit illegal and arbitrary acts of interference in a person's private life, home or correspondence or illegal attacks on a person's honour and reputation as follows:

(a) For the offence of housebreaking, the equivalent of arbitrary and illegal interference in the home, it provides that:

(i) Any person who enters the dwelling of another, against the will of its inhabitant or, having entered it with the express or tacit consent of its inhabitant remains there despite having been told to leave it, shall be punished by a term of three months' to one year's imprisonment;

(ii) If this offence is committed using violence or intimidation or by personation of authority, the penalty shall be a term of imprisonment of one to three years; and

(iii) Any agent of the authorities or public official who searches a dwelling without having carried out the formalities prescribed by the law shall be punished by three months' to one year's

imprisonment and general disqualification from public offices or functions for a term of one to four years;

(b) For the offence of violation and disclosure of secrets, the equivalent of arbitrary or illegal interference in private life, it provides that:

(i) Anyone who, to discover the secrets of another, takes possession of his papers, documents or correspondence in any of their forms or, by means of artifice, intercepts a communication by telephone, telegraph or other media and discloses it, shall be punished by a term of imprisonment of one to two years; and

(ii) If there is no disclosure, the penalty shall be reduced to a term of three months to one year;

(c) For the offences constituting illegal attacks on honour and reputation, it provides that:

(i) Anyone who utters an expression or executes an action to the dishonour, discredit or contempt of another person shall be punished for the offence of insult by a term of imprisonment of three months to one year; and

(ii) If the imputations constituting the insult or calumny were made in the form of a disclosure or through disclosure media which may incite public hatred and contempt of the person offended, then the perpetrator is guilty of defamation and liable to a penalty of six months' to three years' imprisonment.

70. Despite the fact that the national legislation defines these offences and establishes the corresponding penalties for those who violate the right to protection of privacy, the family, the home, correspondence, honour and reputation and the fact that children are included in this protection, in order to secure respect for the enjoyment of this right if it has been violated, children require the intervention of their legal representatives - parents or guardians - not only because they are minors but because violations of this right constitute offences of a private nature. This means that, if the right has been violated, no public authority can act ex officio in defence of privacy. Since minors cannot themselves bring an action, if their legal representatives do not appear for them, the offences will remain unpunished and the honour, reputation and private life of the child will be injured with the consequent psychological damage that this entails.

71. The difficulty facing children in immediately and directly vindicating these rights will be appreciated in the case of minors without parents or guardians.

72. Another difficulty facing children in defending themselves against violation of their privacy in connection with attacks on their honour and reputation is the "express forgiveness" which parents and guardians can grant to the transgressor on the basis of the provision in article 169 of the Criminal Code which states "Forgiveness by the offended party extinguishes the offences of calumny, insult and defamation or the penalty as the case may be." This legislative provision violates the right to respect for his or her views that is granted the child by article 12 of the Convention.

73. Lastly, as far as administrative measures to implement the right in question are concerned, the only ones that exist are those to protect the confidentiality of correspondence. In deference to the international prescriptions of the Universal Postal Union (UPU), of which Honduras is a member, there are domestic regulations to deal with this question. There are also Honduran regulations to protect the privacy of telecommunications.

H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37(a))

74. In our fundamental legislation, the following guarantees are given concerning this right:

(a) Every person has the right to respect for his or her physical, psychological and moral integrity;

(b) No one may be subjected to torture or cruel punishment or treatment; and

(c) Every child must be protected against any form of abandonment, cruelty or exploitation.

75. Although the Constitution declares, recognizes and guarantees the rights mentioned above, there is no secondary legislation to develop these precepts and give them full legal effect.

76. As regards the prohibition in article 37, paragraph (a), last sentence, of the Convention, our Constitution provides that no one may be sentenced to imprisonment for life or to other degrading, proscriptive or confiscatory punishment (art. 97).

77. Lastly, in chapter IV, "On the Rights of the Child", article 122, second paragraph, prohibits the detention of a minor in a prison or penitentiary.

General comments

78. As regards these civil rights and freedoms in particular, the Government of the Republic since the beginning of the present presidential term, on the initiative of the President, has been implementing measures of every kind to guarantee public liberties to citizens in general; evidence of the political will of the present regime is extensively known at home and abroad.

79. Being convinced that it is one way of sensitizing Honduran society in general and the police authorities in particular regarding respect for the rights of the child, the Government has, by a joint effort involving the Executive Secretariat of the Social Cabinet, the National Social Welfare Board and a wide and receptive participation, and with the technical and financial support of UNICEF, carried out a training plan for the ordinary, investigatory and traffic police. This has had such a positive effect that, at the seminar on the revision of Honduran legislation relating to minors, a member of the Police Force made a statement recognizing the benefits of the various courses that are being given to police personnel at different levels through this education plan on the rights of the child.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Parental guidance (art. 5)

80. This right is intimately linked to the civil rights of freedom of thought, conscience and religion and, like the latter, is echoed in articles 152 and 155 of the Constitution where the State declares that:

(a) Parents shall have the preferential right to select the kind of education to be given to their children; and

(b) The freedom of learning and inquiry is recognized and protected.

81. The provision contained in article 5 of the Convention is also legally supported in the Organization of Education Act, a piece of secondary legislation in which the following principles and aims are established:

(a) Principles:

(i) Education is democratic; and

(ii) Education is nationalist since it inspires the teaching of the country's interests and needs and promotes the formation of an awareness that strengthens the feeling of nationality;

(b) Aims:

(i) The purpose of Honduran education is to form citizens aware of their rights and duties, with a deep sense of responsibility and respect for human dignity;

(ii) To form citizens fit to build a democracy which fairly and reasonably reconciles the interests of the individual and those of the community;

(iii) To stimulate the development of feelings of solidarity and understanding among the nations;

(iv) To produce a training that ensures the use of natural resources, science and technology for the integral development of the nation;

(v) To contribute to the preservation of health and to the formation and spiritual elevation of the human being and of society;

(vi) Pre-school education has as its object to guide the child in his or her first experiences, stimulating the development of the personality and facilitating the child's integration into his or her surroundings; and

(vii) Primary education has as its object to offer the basic instruments and contents of culture, further the integral development of the child's personality towards the formation of good habits, stimulate the disposition towards a scientific attitude so as to allow the child to understand natural phenomena

and social events in a rational and objective way, to prepare the child for a healthy approach to life in society which is conducive to the integral formation of the family, to educate the child civically in the affirmation of the Honduran democratic sentiment, to cultivate spiritual and moral feelings and to foster the practice of decent behaviour.

B. Parental responsibilities (art. 18, paras. 1 and 2)

82. With respect to this right, article 121 of our Constitution (in chapter IV, "On the Rights of the Child") categorically states the obligation of both parents with respect to the maintenance, care and education of their children during their minority and in such other cases as the law may provide.

83. It is important to remember that, in Honduras, minority extends until the age of 21 except when the majority has been attained earlier by virtue of the law applicable to the specific case. Bearing this in mind, we find that our Constitution is in harmony with article 18, paragraph 2, of the Convention when, in the second and third paragraphs of article 121, it declares that:

(a) The State shall offer special protection to minors whose parents or guardians are economically incapable of providing for their upbringing and education; and

(b) Such parents and guardians shall enjoy preference for the filling of public offices. The Honduran Constitution goes much further than the Convention in protecting or guaranteeing the child's right to upbringing and development, in that it shares that responsibility with the parents.

84. These rights are developed in the secondary instrument, the "Family Code", article 6 of which provides that the application, interpretation and regulation thereof must be inspired by the unity and strengthening of the family, the interest of the children, the equality of rights and obligations of the spouses and the other basic principles of family law.

85. Article 7 of the same legal instrument states that parents are obliged to provide their children with the means needed for their development and integral formation. The responsibility of the parents is set forth in article 42 of the Code which provides inter alia that:

(a) Parents are obliged to care for the children they have brought into the world, cooperating with one another in their education, upbringing and guidance, in accordance with the principles of morality and proper behaviour;

(b) They are obliged to participate to the extent of their capabilities and possibilities in the direction and development of the home; and

(c) If one of the parents is contributing to the subsistence solely by work in the home and care of the children, the other, who is contributing economically to that subsistence, shall do so without prejudice to the duty to cooperate with the work in the home and the care of the children.

86. These rights are strengthened by the legal institution of "parental authority", contained in the same Code, articles 185 to 187 of which provide that:

(a) Parental authority is a set of rights and duties possessed by parents with respect to the persons and property of their children;

(b) Parental authority includes, among other obligations, those of sustaining, caring for and educating the minor; and

(c) The exercise of parental authority resides in both parents unless, by court order, it has been conferred on one only because the other is incapacitated.

87. To protect minors who, by reason of special circumstances, are not covered by the institution of parental authority, Honduran law contains the legal regime of "guardianship" and provides that the minor who is not under parental authority shall be subject to guardianship for his or her care. The person exercising the guardianship is called the guardian and, to the same extent as the parents, he protects and cares for the child and is his or her legal representative.

C. Separation from parents (art. 9)

88. Article 111 of the Constitution, in chapter III, "On Social Rights", reads: "The family, marriage, motherhood and childhood are under the protection of the State." The family, the nucleus or grouping formed by a father, a mother and children, being a filial union irreplaceable as the primary and basic means of guaranteeing the development of the human person, Honduras recognizes the obligation to protect it with measures of all kinds. Consequently, foreseeing the harm that can be caused to the child by separating him or her from the parents, it has included in its specialized legislation the concepts of safekeeping and care. These procedures are thus converted into instruments for the protection of the child faced with the negative fact of being separated from one or other, if not both, of his or her parents.

89. Thus article 193 of the Family Code provides that, as far as the safekeeping and care of the children are concerned, this shall be defined in accordance with the agreement of the parents if they are not living together. Article 194 goes on to state that:

(a) In the event that no agreement of the parents can be achieved or the agreement is against the best interests of the child, the conflict shall be decided by the competent court which, in reaching its decision, will take into account only what is most beneficial for the children;

(b) As a general rule, it shall be taken that the children will remain in the care of the parent with whom they were residing at the moment the disagreement occurred;

(c) If the children were residing with both parents at the moment the disagreement occurred, preference shall be given to the mother; and

(d) Any other solution that may be found, when this is advisable for special reasons, shall always have regard for the best interests of the child.

The above is in keeping with article 9, paragraphs 1 and 2, of the Convention.

90. As regards the obligation of the States parties to respect the right of the child who is separated from one or both parents to maintain relations with them on a regular basis, except if it is contrary to his or her best interests, article 195 of the Family Code provides that:

(a) The court shall make suitable arrangements for the parent who has not been entrusted with the safekeeping and care of the children to maintain communication with them;

(b) Such communication shall have the frequency that the case requires, having regard to the best interests of the child;

(c) Non-fulfilment of the court's dispositions shall be sufficient reasons to modify the decision as regards safekeeping and care, without prejudice to any criminal liability that may arise from such conduct; and

(d) Exceptionally, dispositions may be adopted which limit the communication of one or both parents with the child or children or even prohibit it indefinitely, always having regard for the best interests of the child.

91. Article 196 provides that the measures adopted by the court concerning safekeeping and care and the communication regime may be modified at any time, if this is appropriate because the circumstances that determined them have changed.

92. As regards article 9, paragraph 4, of the Convention, there is no system of measures of any kind to make possible the implementation of the provisions therein.

D. Family reunification (art. 10)

93. Honduras recognizes the right to freedom of movement or the right to move about freely and to leave, enter and remain in the national territory. This right is established in article 81, first paragraph, of the Constitution. In implementing this right, the Honduran State, like all other countries, makes use of visas which are issued to applicants in accordance with the law. These visas may be obtained:

(a) Inside the national territory through:

(i) The Passport Office, a subsidiary of the Department of Foreign Affairs;

(ii) The Central Office of the Directorate General of Population and Migration Policy, in the capital of the Republic; and

(iii) The Departmental Office of Migration, outside the capital;

(b) Outside the national territory through:

(i) The various Honduran consulates general and vice-consular offices, nearest to the applicant's residence; and

(ii) The consulates of friendly nations so authorized by the Department of Foreign Affairs in those places where our country has no accredited diplomatic or consular representatives.

94. These are the legislative and administrative measures that regulate freedom of movement in Honduras. There are, however, no special provisions to ensure, in the words of article 10, paragraph 1, of the Convention, that "applications by a child or his or her parents to enter or leave" the country "for the purpose of family reunification shall be dealt with ... in a positive, humane and expeditious manner."

E. Recovery of maintenance for the child (art. 27, para. 4)

95. In Title III, "On Declarations, Rights and Guarantees" of the Constitution, chapter IV, "On the Rights of the Child" contains inter alia public assumptions which indicate to the Honduran State the legal protection it is obliged to offer to the child. Thus, in connection with the obligation imposed by the Convention on the State parties of taking appropriate measures to secure the recovery of maintenance for the child from the persons having that financial responsibility in accordance with the law, Honduras has in the Family Code, the Criminal Code and the Minors (Jurisdiction) Act measures of a legislative, judicial and administrative nature calculated to ensure the fulfilment of that obligation. However, their legal effectiveness is often very much damaged by ruses to which the persons in question resort; in most cases they can easily succeed in evading the obligation owing to the lack of a supervisory or follow-up system, such as a minors' supervision office.

96. The legislative measures connected with maintenance in force in Honduras are as follows:

(a) In the Family Code:

Title VI, "On Maintenance", establishes that:

(i) Maintenance includes everything that is necessary for sustenance, housing, clothing, health and education;

(ii) Maintenance shall be proportional to the resources of the person responsible and to the circumstances of the recipient; it must be paid by anticipated quotas;

(iii) The amount of the maintenance can be modified as a result of a change in the circumstances of the person responsible and of the recipient;

(iv) In addition to their legal representatives, mere custodians of the persons concerned shall have the legal capacity to claim the payment of maintenance for minors or disabled adults;

(v) Maintenance cannot be seized by the creditors of the recipient, nor can it be transferred, alienated or surrendered;

(vi) Maintenance shall be payable inter alia to minor children, to minor siblings by blood and to adopted children;

(vii) A person making a will must ensure the maintenance of his child

up to adulthood, if he or she is a minor, and for the complete lifetime if he or she is an invalid;

(viii) A child born as a result of rape is entitled to maintenance;

(ix) Maintenance must be paid retroactively for six months prior to the request, in the event that the person seeking the maintenance has had to contract debts in order to live;

(x) Maintenance shall be payable even after the child has reached his or her majority if her or she has not completed higher education begun during the minority and is obtaining good results, or if he or she is an invalid;

(xi) Where the responsibility for maintenance falls on two or more persons, its payment shall be divided among all of them in proportion to their net worth;

(xii) The guarantee of maintenance for the minor is such that, in cases of urgent necessity when, on account of special circumstances, it is not possible to obtain it from the parents, the judge may order that one or more of the persons responsible for the child must pay it provisionally and conditionally;

(xiii) The judge shall decide the amount of maintenance and the form in which it is to be paid;

(xiv) In order to guarantee maintenance in every case that arises, the judge is empowered to grant - if so requested in the written application - a provisional maintenance order deductible by seizure from the person responsible; and

(xv) The seizure to guarantee the payment of the maintenance shall have priority over any other obligation of the defendant;

(b) In the Criminal Code:

This contains provisions to guarantee the payment of a maintenance order made by an enforceable judgement. Thus Title IV, "Offences against the Civil State in the Order of the Family", chapter IV, "Refusal of Family Assistance", establishes that:

(i) Anyone who has been obliged, by an enforceable judgement, to pay maintenance and has stopped doing so without a proper reason, whether for his or her children under 21 years of age or for a ward under his or her guardianship, will be punished by a term of imprisonment of one to three years;

(ii) Anyone who, to avoid payment of maintenance, declares himself bankrupt, transfers his goods to third parties, gives up his work, assumes family responsibilities or makes use of any other fraudulent means, shall be punished with a term of six months to one year's imprisonment; and

(iii) The maintenance obligation must be paid, even when the culprit is serving one of the sentences mentioned above.

97. The three measures mentioned above, which make it a punishable offence to withhold maintenance, in actual fact lack legal effectiveness, because their existence is completely unknown at the level of the people. This is due to the lack of publicity given to laws, since in our country a law is published only once in La Gaceta, the official journal, which reaches only certain strata of society.

Substantive and procedural legislative measures in the case of persons responsible who are living in a State different from that in which the maintained person lives

98. With respect to the above, Honduras, as a contracting party to the Convention on Private International Law, has in its current legislation the rules of the regime contained in that international legal instrument and, closely related thereto, the provisions in its domestic law of the Code of Civil Procedure.

99. These two legislative measures between them establish rules to guarantee the payment of the maintenance, including:

(a) In the Convention on Private International Law:

(i) The rule giving the child the right to maintenance is a rule of international public order (art. 59);

(ii) The personal law of the country of the person entitled to maintenance shall govern the legal concepts of maintenance, the manner of providing it and the extent of the right (art. 67);

(iii) The provisions which establish the duty to provide maintenance, its quantity and reduction or increase, the timeliness in which it is owed, the form in which it is paid as well as the provisions that prohibit the renunciation and the transfer of that right are matters of international public order (art. 68);

(iv) The competent judge for the hearing of personal actions shall be: that of the place in which the obligation is fulfilled and that of the place of domicile of the defendants or, subsidiarily, that of the place of residence of the latter (art. 323);

(v) In each contracting State, the preferential competence of the various judges shall be adapted to its domestic law (art. 332); and

(vi) Any judgement given in a contracting State shall have force of law and may be executed in the others, if the following conditions are met: the judge or court who or which has given it is competent, the parties were legally summoned to appear, the decision does not contravene public order and the public law of the country in which it is to be executed, the decision is enforceable in the State in which it was pronounced, the judgement has been translated by an authorized official or official interpreter of the State in which it is to be executed - if the language used is different, and the document containing it meets the requirements for authenticity and all other requirements of

the legislation of the State in which the judgement is to be enforced (art. 423).

(b) In the Honduran Code of Civil Procedure:

(i) Judgements given in a foreign country shall have in Honduras the force given them by the respective treaties (art. 235);

(ii) They shall be executed in accordance with Honduran procedures, if these have not been modified by the said treaties (art. 235);

(iii) If there are no treaties concerning this matter with the nation from which the judgements come, they shall have the same force as is given there to judgements issued in Honduras (art. 236);

(iv) Even if they are not included in either of the previous cases, judgements shall be executed if they have all the following characteristics: the judgement has been given on the basis of a personal action and has not been given for contempt of court, the obligation can be licitly performed in Honduras and the enforceable judgement meets the requirements for authenticity and the other requirement of Honduran law for acceptance in Honduras (art. 238).

F. Children deprived of a family environment (art. 20)

100. The Honduran State recognizes the obligation to protect children and declares, in articles 119 and 120 of its Constitution, that:

(a) Children shall enjoy the protection specified in the international agreements that watch over their rights;

(b) The laws for the protection of children are matters of public order and the official establishments for that purpose shall have the character of Social Welfare Centres; and

(c) Persons of minor age who are physically or mentally deficient, irregular in their behaviour, orphans or abandoned, shall be subject to a special legislation for rehabilitation, observation or special protection according to the case.

101. Despite the fact that the constitutional precepts establish that persons of minor age who are physically or mentally defective, of irregular behaviour, orphans or abandoned are subject to a special legislation for purposes of rehabilitation, observation or protection, the actual situation is that, although this is set forth at the primary legislative level, there are no secondary or ad hoc regulations to implement the constitutional decision. However, we have a set of regulations entitled the Minors (Jurisdiction) Act which, in one way or another, during the entire time that it has constituted positive law applicable in our country, has served, though only in an incipient way, to resolve via the juvenile courts, the various cases that have come under their cognizance. Article 1 of this Act establishes that:

(a) It shall apply to persons over 12 years of age and under 18 years of age in cases where they are accused of committing offences or misdemeanors; and

(b) It shall apply for protective purposes to persons under 12 years of age whose conduct is irregular, to the materially and morally abandoned, to children who are victims of the exploitation or turpitude of their parents, guardians or curators and to those who are in any other form of irregular situation.

102. There are only two juvenile courts in Honduras, one in Tegucigalpa and the other in San Pedro Sula. In places where there are no juvenile magistrates, the departmental or sectional judges act as such, subject to the provisions of the Act, this being the entire judicial infrastructure that the country possesses.

103. Article 14 of the same Act establishes that the following shall act as ancillary organizations to the juvenile courts: custodial centres, observation centres, re-education centres, the minors' protection body and such other organizations as may be regarded as necessary.

104. Article 15 provides that minors shall be temporarily lodged in the custodial centres, while the magistrate is considering the case.

105. Article 16 provides that the observation centres shall be technical organizations responsible for assessing the personalities of minors. These observation centres shall remit to the magistrate, within not more than a term of 25 days, a report on the study they have made of the minor with an indication of the factors that have influenced his or her maladjusted behaviour.

106. Article 18 states that the re-education centres have as their purpose the rehabilitation of the minor, through a special educational system.

107. Article 20 states that the minors' protection body is the organ responsible for giving advance warning of situations of danger, abandonment and delinquency, in which minors may be found.

108. All the ancillary organizations indicated above, must, according to the Act, consist of a director, a sub-director, psychologists, social workers, psychiatrists and teachers. Their staffs are to be appointed by the National Social Welfare Board, which is also responsible for their financial, technical and administrative management.

109. Chapter V of this instrument contains in its articles all the material concerning the "representation of minors". This is the responsibility of special procurators, appointed by the Supreme Court of Justice from among persons with the same qualifications as those required for a juvenile magistrate. In places where there are no juvenile courts, the role of the procurators is played by the attorneys of the Departmental and Sectional Courts. The Act provides that the duties of minors' procurators shall include the following:

(a) To be a party in proceedings relating to minors;

(b) To ensure that the individual safety and dignity of the child are not diminished by judicial decisions or by acts of other authorities;

(c) To follow up the treatment to which the minor has been subjected and to review it in terms of the progress made in readapting the minor, suspending it whenever it no longer has a purpose and returning the child to his or her family circle;

(d) To initiate before the common courts actions arising from offences and misdemeanors against minors, except in connection with private offences;

(e) To promote, on behalf of the minor, applications for maintenance and those for the ending of parental power or guardianship and administration of goods;

(f) To intervene in proceedings for divorce, nullity of marriage and dissolution of marriage by mutual consent, as representatives of the minors, whenever such aid is needed;

(g) To represent minors in proceedings for the recognition of children, legal emancipation or to remove children from the personal care of their parents;

(h) To represent the interests of minors in proceedings for adoption and in actions to establish paternity; and

(i) To engage in any other action for the protection of minors which a prudent administrator would deem fit.

110. In order to complete the information concerning existing legislative measures to represent minors in judicial actions, we may include the legal provision which, within the framework of the Office of the Attorney-General of the Republic (Organization) Act, states "Article 20: it is the duty of the Public Prosecution Section to: .... (5) submit complaints and accusations on behalf of minors who, having been the passive subjects of offences resulting from private action, have not been granted the protection of the courts as a result of negligence, carelessness or the poverty of their parents or legal representatives".

111. Administrative or infrastructural measures to implement some of the legislative measures include, with particular reference to the ancillary organizations to the juvenile court and to the minor who is deprived of his or her family environment, custodial, observation and guidance centres, namely:

(a) Custodial centres:

(i) Two centres for minors of the male sex, one at Tegucigalpa and the other at San Pedro Sula; and

(ii) A custodial centre for minors of the female sex at Tegucigalpa;

(b) Observation centres: two centres, one for minor males and the other for minor females, both in Tegucigalpa; and

(c) Guidance centres:

(i) Four centres in the Department of Francisco Morazán, which deal with children having serious problems, including Jalteva Juvenile Guidance Centre, for male juveniles, located in Jalteva village, Municipality of Cedros, and the Támara Juvenile Guidance Centre, for female minors, located in Támara village, Central District, which has a nursery attached to house inmates' children up to three years of age; and

(ii) Two centres in San Pedro Sula, Department of Cortés, one of which caters for minor males and the other for minor females;

(iii) Two centres which look after minors with lesser problems, catering for minors of the male and female sexes respectively between the ages of 8 and 18 years, both of them situated in the town of Comayaguela, Central District, one of which is called the New Horizon Centre, and the other the Humuya Guidance Centre;

(iv) Open methodology centres, catering for minors of both sexes engaged in peddling, between the ages of 7 and 17 years, one of which is located in Tegucigalpa and the other in San Pedro Sula; they are called "Child Peddler Centres"; and

(v) The La Estancia Centre which caters for children who have made their homes in the streets, giving them systematic attention - in the streets - through group and individual therapy both for themselves and, where it is possible to identify them, their families.

112. The following subprogrammes are applied in these centres: scholarships, microventures and family reunion. In support of the work of these centres, there is a unit to follow up the minors when they leave and have no family environment to return to or place in which to settle. The methods used involve what are called juvenile hostels and the microventures already mentioned.

113. These centres furnish the following forms of care and attention:

(a) The prime necessities of housing, clothing and food;

(b) Health requirements: general medical and dental services;

(c) General basic training, moral, civic and Christian guidance and directed recreation; and

(d) Vocational training in the following courses: tailoring, carpentry, shoemaking, bricklaying, industrial mechanics, horticulture, music and art, dressmaking, confectionery, manual crafts, beauty treatment, typing and domestic service.

114. There is also the Special Investigation and Rehabilitation Centre (CIRE) which caters for children aged from 3 to 12 years with hearing, speaking and slow learning problems, providing a diagnostic service, treatment and special education. For children and young persons aged between 12 and 25 years, having hearing and speaking problems, or slight or moderate mental retardments, there is also the Special Training Centre (CECAE), which gives them guidance and vocational training.

G. Adoption (art. 21)

115. The legal institution of adoption is recognized in Honduras by article 116 of the Constitution which states that the right to adoption is recognized and shall be regulated by the law.

116. In fulfilment of its constitutional mandate, the Honduran legislature has regulated this institution in chapters I to XVII of Title IV, "On Adoption", of the Family Code, where it establishes two types of adoption: simple adoption and full adoption. It also sets out a series of requirements for both the adopter or adopters and the person adopted, including:

(a) Adoptive parents must be over 25 and under 51 years of age, entitled to enjoy and exercise their civil rights, of good behaviour and able to sustain, educate and care for the adoptive child;

(b) If the adoptive parents are foreigners non-resident in the country, they must also be able to show that a governmental or private agency in their country, recognized by the State, will supervise the fulfilment of their obligations in respect of the adoptive child;

(c) Such agencies must meet the requirements established in the recently-amended article 120 of the Family Code;

(d) In a case of joint adoption, it shall be sufficient if one member of the couple is within the required age range;

(e) The adoptive parent must be at least 15 years older than the adoptive child and, in the case of joint adoption, that difference in age shall relate to the younger adoptive parent;

(f) The consent of the adoptive child, if he or she is a major, or of his or her legal representatives, if he or she is a minor, and the authorization of the court are essential requisites;

(g) Before the above requirements have been completed, the administrative measure shall be applied of summoning the biological parents to appear before the National Adoptions Division of the National Social Welfare Board, so that they may have explained to them the legal effects and the social and psychological consequences arising from the adoption;

(h) In the case of minors declared to be abandoned or wards of the court, consent shall be given by the National Social Welfare Board, with the authorization of the court;

(i) If the adoptive child is a minor and has property, the adoptive parents shall be subject to the guardianship regimes with respect to its administration;

(j) Every case of adoption must be entered in the Civil Register and annotated in the margin of the entry of birth of the adoptive child;

(k) The sole document originating the adoption shall be the certificate of judgement issued by the court that approves the adoption process and which must state whether the adoption is simple or full;

(l) Even if all the requirements for adoption are present, the court shall assess in every case, before giving its judgement, the advantage for the adoptive child - the higher interests of the child;

(m) Any person with an interest against the adoption may record his or her opposition with the Civil Register within a period of 15 days;

(n) No Civil Register may expressly certify that affiliation is adoptive, unless this is ordered by a court;

(o) Persons may be subjects of an adoption order only if they are under 18 years of age and of unknown parents, orphans or in a state of abandonment;

(p) However, minors subject to parental authority may be adopted if the parents in question are unable to give the child sustenance, care and education, provided that these extremes are fully proven or, in the view of the competent judge, the adoption is to the benefit of the minor;

(q) Anyone may challenge the adoption before the competent judge before his decision is given;

(r) An adoption application is an intuito personae act and, consequently, cannot be carried out through an agent but must be a personal act by the adoptive party or parties;

(s) Adoption, as a legal act, creates rights and obligations between the adoptive parents and the adoptive children;

(t) If the adoptive parent dies while the adoptive child is still a minor and if that child had, previous to the adoption, been under the protection of a social welfare centre, he or she shall return to his habitual place of provenance if that is in his or her higher interest, a circumstance that must be decided in a summary procedure by the judge, after receiving a report from the National Social Welfare Board;

(u) There is a nullity action for those cases in which the adoption suffers from error, coercion or fraud;

(v) A nullity action may be brought by any person having a current interest in the matter;

(w) Such an action can be brought within a period of four years from the date of entry of the adoption in the Civil Register;

(x) The rights conferred by simple adoption on the adoptive parent are suspended for the same reasons that parental authority is lost but, in both cases, the obligation to maintain the child remains;

(y) Simple adoption is ended by mutual consent between the adoptive parents and the adoptive child, when the latter has reached his or her majority; by a legally-approved challenge; and by revocation;

(z) Within two years after the attainment of his or her majority, the adoptive child can challenge the adoption;

(aa) Full adoption can be granted only to spouses who live together, whose marriage is at least three years old and who act by common accord;

(bb) Full adoption creates between the adoptive parents and the adoptive child the same legal bonds as those linking parents to their children. In addition, the adoptive children acquire the benefits of sanguinity with the adoptive parent or parents, their links with their natural families being fully, totally and absolutely broken, except in connection with the matrimonial impediments established by the law; and

(cc) Full adoption is irrevocable and non-challengeable and does not end in any circumstances.

117. In accordance with the most recent reforms of the Family Code, the following sections were established within the organizational structure of the National Social Welfare Board, as subsidiary organs of the National Adoptions Division:

(a) Family Advisory Section which has, inter alia, the following functions:

(i) To advise the biological mothers and explain to them the socio-economic and psychological consequences and legal effects of adoption;

(ii) To prepare and train the future adoptive parents, whether native or foreign, in the social, psychological and legal aspects of adoption; and

(iii) To train persons interested in receiving in their homes (family placement) minors in the process of adoption;

(b) Psychological Assessment Section, whose functions are:

(i) To assess minors who are to be adopted and

(ii) To assess the future adoptive parents;

(c) Section for the Adoption of Difficult Children. This section examines the cases of children more than five years old who are confined in the country's protection institutions, twins (multiple adoption), and minors with physical or psychological impediments. In these, the so-called difficult cases, a very special priority procedure is needed. This includes, according to the age and maturity of the child, listening to his or her opinions in all the matters that affect him or her and taking these opinions duly into account. This is the principle of respect for the child's views, as contained in article 12 of the Convention;

(d) Analysis, Supervision and Follow-Up Section which is responsible for monitoring the family placements of children in the course of the adoption process as well as national and international adoptions; and

(e) The Computerization Section which, of course, deals with all the data processing connected with adoption.

118. The above information covers all the main legal measures, based on legislation, which typify and control the judicial and administrative procedures to which adoption is subjected in Honduras.

H. Illicit transfer and non-return (art. 11)

119. Honduras has neither primary nor secondary legislation which specifically covers these offences. However, by analogy, we might mention the "offence of removal of minors", whose variants are given in the four articles covering it and which includes, among the penalties for such offences, the following:

(a) The removal of a child under 12 years of age shall be punished with a term of two to three years' imprisonment;

(b) The same penalty shall be applied to anyone who, finding himself or herself in charge of a minor, does not offer the minor to his or her parents or guardians or give a satisfactory explanation concerning his or her disappearance;

(c) That a term of 3 months' to one year's imprisonment shall be imposed on anyone who induces a minor between 12 and 18 years of age to leave his or her home; and

(d) A fine of between 100 and 300 lempiras shall be imposed on anyone who, having the responsibility for the upbringing and education of a minor, hands him or her over to a public establishment or to another person without the authorization of the person who had entrusted the minor or, in the absence of such a person, of the competent authority.

120. As regards the illicit transfer of minors abroad, there are regulations in the Passport Act and the Population and Migratory Policy Act which establish administrative measures that, in one way or another, may prevent the illicit transfer of minors abroad. Among these measures, we may mention the following:

(a) The admission and stay of foreigners in the national territory (immigration) is regulated;

(b) The emigration of Honduran nationals and residents in Honduras is regulated;

(c) The entry and departure of tourists and other persons who are not immigrants are also regulated, with police systems for the control of clandestine immigration; and

(d) There are combined control systems involving the Directorate General of Population and Migratory Policy, the Department of Foreign Affairs and the Police. There are also bipartite Honduras-Interpol police systems, all of which are in keeping with the measures adopted in connection with freedom of movement or migratory movement.

I. Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)

121. The Constitution sets forth and declares guarantees such as the following:

(a) That children shall enjoy the protection specified in the international agreements that watch over their rights;

(b) That the official establishments intended for that purpose shall have the character of social welfare centres;

(c) That every child must be protected against every kind of abandonment, cruelty, exploitation and any form of slavery;

(d) That the use of minors by their parents, guardians or any other person for begging shall be prohibited; and

(e) That, in all circumstances, a child must be given priority for the receipt of assistance, protection and aid.

122. While in accordance with the provisions of article 19, paragraph 1, of the Convention, the Honduran Constitution goes even further in the realm of protection. The Convention provides that the States parties shall take all appropriate measures to protect the child from all the abuses mentioned above, while the child is in the care of parents, or any other person who has such care, but the Honduran Constitution declares and recognizes that this kind of protection must be extended to every child whatever the circumstances in which he or she find himself or herself (art. 124 of the Constitution).

123. As for effective protective measures and procedures for the establishment of social programmes, Honduras lacks the financial capacity to be able to structure these in a fully effective way, including prevention and rehabilitation, follow-up observation and subsequent guardianship, despite the fact that we have clear and precise legislative provisions, at least at the constitutional level. Nevertheless, the implementation of administrative, judicial and other measures is not easy and what we have succeeded in doing is very tentative due, inter alia, to two basic causes:

(a) The complete lack of any secondary legal regulations containing, in addition to the indication of procedures, the necessary coercitive instruments to implement, both legally and administratively, the teleology set forth in the Constitution; and

(b) The lack of financial resources that could be earmarked, via a special budget, for all the programmes to the benefit of minors that must be urgently executed.

J. Periodic review of placement (art. 25)

124. As a State subject to the rule of law, Honduras is and always has been determined to protect children and to ensure that children enjoy without any discrimination whatsoever the protection set forth in the international agreements that watch over their rights. Consequently, the right to periodic review or the child's right to have his or her treatment monitored, according to article 25 of the Convention, is a right that is recognized in Honduras.

125. Consequently, the National Social Welfare Board, the organ responsible for programmes for the care of minors, not only has its own boarding institutions under its direct management and supervision but also coordinates and, in one way or another, supervises or obtains information concerning social programmes for the benefit of minors lodged in philanthropic institutions which are not government-controlled. However, for economic reasons, this monitoring work is not carried out with the periodicity and systematic efficient and reliable procedures that might be desired.

VI. BASIC HEALTH AND WELFARE

A. Survival and development (art. 6, para. 2)

126. Honduras not only recognizes that every child has the right to life but also recognizes that that right is inviolable. Article 61 of the Constitution declares: "The Constitution guarantees to Hondurans and foreigners resident in the country, the right to inviolability of life ...." Once again, article 65 reiterates this declaration that "the right to life is inviolable". Article 123 provides that every child shall have right to grow and develop, for which purpose he or she must be given special care, and thus has the right to enjoy sustenance, housing, clothing, recreation and adequate medical services.

127. Honduras, as stated in its Constitution, respects international treaties and conventions and the texts of such instruments, once signed and ratified, become law that is in force in the country. Honduras fails to comply with them or lags behind in complying with them only for reasons of a financial nature that prevent it from implementing the administrative and legal infrastructure which would help to render legally effective the legislative measures which protect those rights and reflect the country's commitments.

B. Disabled children (art. 23)

128. Article 120 of the chapter "On the Rights of the Child" of the Constitution provides that physically or mentally disabled minors ... are subject to a special legislation concerning rehabilitation, supervision and protection according to the case." In addition to this constitutional statement, Honduras has, at the administrative level, a semi-autonomous official organization, subordinate to the Department of Labour and Social Security, which operates under the name of the Honduran Institute for the Rehabilitation of the Handicapped (IHRM). This is a State entity responsible for directing and coordinating policies concerning the habilitation and rehabilitation of the handicapped or the disabled.

129. Honduras has approximately 225,000 children under 18 years of age who suffer from disabilities, 80 per cent of whom live in the country. The main immediate causes of the disabilities in children are malnutrition, pathologies, problems at the moment of birth, accidents and hereditary defects, the latter derived from the immediate or original cause, which is extreme poverty. In general, therefore, the children most exposed and most vulnerable to disabilities are those who live in extremely difficult economic situations. The frequency of accidents is much greater on account of the precarious conditions in which they live, while the risks of illness are greater because of insanitary

conditions and because they lack access, inter alia, to the basic services of drinking-water and sewerage systems.

130. The IHRM is very short of resources but, nevertheless, in the short period of its existence, it has done some excellent work, particularly with regard to having its authority and competence recognized as the official directing organ for policies and strategies that must be implemented in a coordinated way for the rehabilitation of the handicapped.

C. Health and health services (art. 24)

131. Through its Constitution, the Honduran State recognizes that

(a) Its subjects have right to protection of their health;

(b) It is the duty of all to participate in the promotion and preservation of personal and community health;

(c) The State must maintain an adequate environment to protect the health of individuals;

(d) Through the Ministry of Public Health and Social Assistance, it coordinates all the public activities of the centralized and decentralized units of the health sector, by means of a national health plan in which priority must be given to the most needy groups;

(e) In accordance with the law, the State has to supervise private health activities;

(f) The executive power shall encourage integrated programmes to improve the nutritional condition of Hondurans; and

(g) The Honduran Institute for the Prevention of Alcoholism and Drug-Addiction (IHADFA) is active in the specific area of combating the social blemishes of alcoholism and drug-addiction.

132. Quite recently, through Decree No. 65-91, the Health Code was adopted on 28 May 1991 and published in La Gaceta, the official journal, on 6 August 1991. On that date, it became law in the country and its main precepts with regard to health are as follows:

(a) That everyone has a right to the assistance, rehabilitation and services needed for the conservation, promotion and recovery of his or her health;

(b) The Department of Public Health is responsible for ensuring that conditions are appropriate for the fulfilment of this Act;

(c) Everyone has the right to obtain from the competent officials appropriate information and adequate instructions concerning matters, actions and practices conducive to the promotion and conservation of his or her personal health and of that of his or her family;

(d) Every student must submit to all preventive health examinations and participate in the educational programmes and practices concerning health and nutrition;

(e) The Department of Education shall incorporate these programmes into all educational establishments, whether public or private;

(f) The Directorate General of Health, a subsidiary organ of the Department of Public Health, shall, through rigorous systems, control, supervise and sanction everything concerned with salubriousness in the retailing of foodstuffs, beverages and other articles of consumption.

133. The Department of Public Health, in order to carry out its responsibilities of regulating everything concerned with health, has an organizational structure divided geographically into eight regions, namely:

(i) Number 1 health region: Departments of El Paraíso, Francisco Morazán and Gracias a Dios;

(ii) Health region No. 2: Departments of Comayagua, La Paz and Intibucá;

(iii) Health region No. 3: Departments of Cortés, Santa Barbara, Yoro and three municipalities of the Department of Lempira;

(iv) Health region No. 4: Departments of Choluteca, Valle, four municipalities of the Department of Francisco Morazán and two municipalities of the Department of El Paraíso;

(v) Health region No. 5: Departments of Copán, Ocotepeque, Lempira and two municipalities of the Department of Santa Barbara;

(vi) Health region No. 6: Departments of Atlántida, Colón, Islas de la Bahía and three municipalities of the Department of Yoro;

(vii) Health region No. 7: Department of Olancho;

(viii) Metropolitan health region, comprising the metropolitan area of Tegucigalpa and the Municipality of the Central District.

134. Each of these health regions is responsible for protecting the health of the populations within its respective area or territorial jurisdiction and has the duty to ensure that the various communities participate jointly in the promotion and preservation of health and in the preservation of an adequate environment for the achievement of its main purpose. They have also the duty, through their subordinate bodies, to regulate, supervise and control foodstuffs and chemical and biological products and to promote integral programmes to improve the nutritional status of Hondurans.

135. The above structure carries out its work by means of the following institutional infrastructure:

I. Primary health care

1. Basic community unit, consisting of:

1.1 A trained empiricist midwife;

1.2 A health worker; and

1.3 Representatives who promote community participation and serve as a liaison between the health authorities and the community.

2. Rural health centre (CESAR)

2.1 Consisting only of one nursing auxiliary, with one year's training, who functions in an area of 3,000 inhabitants. At the present time, there is a total of 560 CESARES spread throughout the country and caring for the communities with the greatest concentration of population and the greatest health risks.

II. Units with medical care

1. Health centres with doctors in social service (CESAMOS). These function in rural areas with populations of 20,000 inhabitants and consist of:

1.1. A medical graduate, carrying out his social service; and

1.2 A nursing auxiliary; at present there are 177 CESAMOS distributed through the various parts of the country and connected with:

III. Units with medical and hospital care

1. Area hospital centres (CHA). These operate in urban areas in support of the CESARES and CESAMOS through a system of references and counter-references. They have special departments of pediatrics, internal medicine, gynaecology and obstetrics and surgery, with a qualified professional for each speciality. At present, the following CHAs are functioning in the country:

1.1 The Puerto Lempira CHA, Department of Gracias a Dios;

1.2 El Progreso CHA, Department of Yoro;

1.3 Subirana CHA, Department of Yoro;

1.4 Cortés CHA, Department of Puerto Cortés;

1.5 Salvador Paredes CHA at Trujillo, Department of Colón;

1.6 Tela CHA, Department of Atlántida;

1.7 Tocoa CHA, Department of Colón;

1.8 Roatán CHA, Department of Islas de la Bahía;

1.9 Santa Bárbara CHA, Department of Santa Bárbara;

1.10 Gracias CHA, Department of Lempira;

1.11 Roberto Suazo Córdova CHA, at La Paz, Department of La Paz;

1.12 Gabriela Alvarado CHA, at Danlí, Department of El Paraíso;

1.13 Catacamas CHA, Department of Olancho; this has a mother and child clinic;

1.14 Enrique Aguilar Paz CHA, at La Esperanza, Department of Intibucá;

2. Regional hospitals. Installed in urban areas with regional cover, they have all the various specialities and are the following:

2.1 Santa Teresa Hospital, Department of Comayagua;

2.2 Southern Hospital, department of Choluteca;

2.3 San Francisco Hospital at Juticalpa, Department of Olancho;

2.4 Atlántida Hospital at La Ceiba, Department of Atlántida;

2.5 Western Hospital, Santa Rosa de Copán, Department of Copán;

3. National hospitals. Installed in urban areas with national cover, they operate services in all the specialities and are as follows:

3.1 Mario Catarino Rivas Hospital, San Pedro Sula, Department of Cortés;

3.2 San Felipe General Hospital and Invalids Home, Tegucigalpa, Department of Francisco Morazán;

3.3 Teaching Hospital, Mother and Child Hospital complex, Tegucigalpa, Department of Francisco Morazán;

3.4 General Chest Hospital, Tegucigalpa, Department of Francisco Morazán;

3.5 Santa Rosita Neuro-Psychiatric Hospital, Támara village, Municipality of the Central District, Department of Francisco Morazán; and

3.6 Mario Mendoza Acute Illnesses Hospital, Tegucigalpa, Department of Francisco Morazán.

136. The entire infrastructure described above for the various levels of health services, and the material and human resources necessary for their functioning, are supported by the General National Budget of Outlays and Incomes. At the administrative and institutional level, there are also the health services rendered by the Honduran Social Security Institute (IHSS) through two hospital centres: (a) the General Hospital and (b) the Mother and Child Hospital. The first operates in Tegucigalpa and the second in Comayaguela, Municipality of the

Central District. In addition to the care given by this institution in terms of out-patients clinics, there is also an added dental component in some of them which give dental care other than denture work. The following out-patients clinics are currently operative: one in Tegucigalpa, Department of Francisco Morazán, one in San Pedro Sula, Department of Cortés, one in El Progreso, Department of Yoro, one in Choloma, Department of Cortés, and another in Juticalpa, Department of Olancho.

D. Social security and child-care services and facilities (art. 26 and 18, para. 3)

137. Despite the fact that article 123 of the Constitution states that: "every child shall enjoy the benefits of social security ...", there is no special system in Honduras to guarantee children the benefits of social security, not even in the form of social insurance, still less in the form conceived by the Convention.

138. There is only a system of social security directed solely at the formal labour sector, in which the employer-worker relationship exists.

139. Under this system, medical and hospital services are granted to children, between 0 and 5 years of age, who are children of the workers. They also have the possibility of receiving a pension in the event of the death of their father or mother who is affiliated to the system. Between 5 and 18 years of age, however, such children - like the other Honduran children - are outside any social security and welfare cover.

140. Honduras has indeed a system of social security, maintained by the three pillars of the State, employers and workers, which are constitutionally bound to finance, improve and expand social insurance. However, this social security is conferred solely on the population regarded as formally employed, i.e. persons who are working for or giving their services to employers obliged to contribute to the system.

141. There is no full geographical coverage as far as the formal working population is concerned, nor is there complete coverage in terms of services and protection. As for the population covered but not as direct beneficiaries, the wives and children of the workers covered receive mother and child care, the ladies only in the prenatal period and up to 6 weeks after the birth, and the children up to 5 years of age. These are given medical and hospital care solely in the areas where the complete service exists. Elsewhere, there are only out-patient services. Information on the subject is given elsewhere in this chapter.

142. There are also other autonomous State entities which, as social security institutions, provide old-age, sickness and death benefits for the persons affiliated to them, this being determined on a vocational or sectoral basis. Thus we have:

(a) The National Teachers Security Institute (IMPREMA), to which members of the teaching profession throughout the country are affiliated;

(b) The National Institute of Retirements and Pensions for Employees of the Executive Power (INJUPEN), to which all civil servants and public employees are affiliated. It began operating only with employees of the central Government but is now gradually extending towards the employees of local

Government, and autonomous and semi-autonomous institutions. It is also considering extension to the private sector;

(c) The National Security Institute for Employees of the Autonomous National University of Honduras (IPREUNAH) which, as its name indicates, covers the teaching and administrative personnel of the University;

(d) The Military Social Security Institute (IPM) which, as its name indicates, covers only members of the armed forces (and not all of them); and

(e) The Journalists Security Institute (IPP), which covers professional workers in journalism.

143. Within the social security system, all these social security institutes provide only old-age, sickness and death benefits and personal and housing loans. We mention them in this report because, as regards death benefits, the children of the deceased person receive the life insurance or relevant economic benefit. Thus, if the deceased at the moment of his or her death had been paying off a housing loan, the housing insurance cancels the loan on behalf of his or her successors, gives them title to the property and reimburses what the person in question had amortized up to the moment of his or her death.

144. The Honduran Social Security Institute (IHSS), apart from its health services, also covers disability, old-age and death pensions for those workers who are not affiliated to the systems mentioned above.

145. As regards the measures which the State's parties must take to ensure that children of working parents have the right to benefit from child-care services and facilities, our country has a total of 17 child-care services and facilities which meet the minimum requirements.

146. Among these child-care services and facilities, we have ten centres called child nurseries of the Directorate General of Social Security of the Department of Labour and Social Security. These centres are mainly located in the areas of the greatest concentration of working population and care for 1,420 children. They are as follows:

Child Nursery No. 1, in Tegucigalpa, Department of Francisco Morazán;

Child Nursery No. 2 at La Ceiba, Department of Atlántida;

Child Nursery No. 3 at Comayaguela, Department of Franciso Morazán;

Child Nursery No. 4 at San Pedro Sula, Department of Cortés;

Child Nursery No. 5 at La Lima, Department of Cortés;

Child Nursery No. 6 at Progreso, Department of Yoro;

Child Nursery No. 7 at Danlí, Department of El Paraíso;

Child Nursery No. 8, at Santa Rosa de Copán, Department of Copán;

Child Nursery No. 9, at Santa Rita, Department of Yoro; and

Child Nursery No. 10, in Colonia San Francisco, Comayaguela, Department of Francisco Morazán.

All the child nurseries give child-care services and facilities up to the age of 6 years for the children of working parents. The children remain in these centres for a period of twelve hours between 6 a.m. and 6 p.m.

147. The work of these child nurseries is coordinated by the Department for the Protection of Children which, under the direction of professional persons with university qualifications, is responsible for the effectiveness of all the services given to children since, when the children leave the nurseries at the age of 6, they obtain their certificates of preschool education, duly authenticated by the Ministry of Education. The services and benefits given and offered to the children in the nurseries can be classified into four areas:

(a) Health care;

(b) Nutritional care;

(c) Unitary care; and

(d) Education and training.

This last area includes the aspects of: (i) formal education, (ii) early stimulation and (iii) psychological care.

148. As regards health care, these nurseries have at their disposal a general medical practitioner, apart from nurseries No. 1 in Tegucigalpa, No. 2 in La Ceiba and No. 6 in El Progreso, which have paediatricians. These medical practitioners are under contract to care for the children in the nurseries during two hours per day.

149. The nurseries are organized as follows:

(a) Administration area;

(b) Social work area;

(c) Educational area, with classrooms at the kindergarten and preparatory levels;

(d) Medical care area: a clinic;

(e) Cradle area;

(f) Nursery area;

(g) Dining-room and kitchen area;

(h) Ablutions area;

(i) Recreation area; and

(j) Pantry and larder area.

150. The permanent staff consists of:

(a) Administrative staff: a headmistress;

(b) Technical staff, consisting of a doctor, nurse, social worker and schoolmistresses;

(c) Support staff: purchasing officer, nursemaids, cleaners and caretakers.

151. In each nursery, the parents of the children are organized into a parents association, with a board, to support the nursery. The associations even assist financially in terms of petty cash for expenses not covered by the budgetary allocations but nevertheless needed.

152. On average, each nursery cares for 142 children and this figure indicates the enormous disproportion between the number of the workers and the number of their children benefiting from child-care services and facilities while they are working.

153. There are also child-care centres supported by the National Social Welfare Board, namely:

(a) Three nurseries which care for the children of working parents who have no one to look after them at home. They accept children from 0 to 6 years of age, from 6.30 a.m. to 5.30 p.m., who are given food-care, and stimulation of their potential so as to contribute to their adequate physical, mental, emotional and social development. These nurseries are called Integral Development Centres (CEDIN), and consist of: (i) the San Isidro Child Integral Development Centre (CEDIN - SAN ISIDRO), for the children of parents who are working in the San Isidro market, at Comayaguela and (ii) the Los Dolores Child Integral Development Centre (CEDIN - LOS DOLORES), located in Tegucigalpa. These child integral development nurseries or centres (CEDIN) are so called because they attempt to combine in them the components of preschool education and medical and psychological care;

(b) Three centres called Day-Care Homes (HCD), located in the marginal housing estates of Villa Unión, Villafranca and Villa Nueva, each of them covering 20 children, which operate under the supervision of a voluntary family which looks after these children from 6 a.m. to 6 p.m., supplying them with protection, food and recreation. This type of service makes it possible for the community to cooperate in the protection of the child and helps to ensure that the family environment is not broken; and

(c) One child-care centre called the Day-Care Centre (CCD), located in Tela, Department of Atlántida, which cares for 60 children whose mothers work in particular in assembly plants. It looks after their food, nutrition, early stimulation, directed recreation and protection.

E. Standard of living (art. 27, paras. 1-3)

154. In harmony with this provision of the Convention, article 121 in the chapter "On the Rights of the Child" in the Constitution of Honduras states that:

(a) Parents are obliged to sustain, care for and educate their children during their minority and in the other cases in which this is legally warranted; and

(b) The State shall offer special protection to minors whose parents or guardians are economically incapable of providing for their upbringing and education, and

(c) All else being equal, these parents shall enjoy preference for the filling of public offices.

155. Article 123, second paragraph, of the Constitution declares that:

> "Every child shall enjoy the benefits of social security and education. The child shall have the right to grow and develop in good health, for which purpose both the child and his or her mother shall be given special care from the prenatal period onwards, with the right to enjoy sustenance, housing, education, recreation and sport and adequate medical services".

156. These legislative measures, although they constitute solemn constitutional declarations and guarantees, lack any legal effectiveness in practice owing to the absence of any ordinary legislative rules in Honduras which means that there are neither administrative instruments nor sanctions to ensure their fulfilment.

157. With regard to future measures, as in all the other aspects of the lack of protection for children in Honduras, the Executive Secretariat of the Social Cabinet is working on the preparation of the bill containing the Minors Code. The intention is that a bill containing the said Code should be made available as soon as possible so that the Government of the Republic can submit it to the National Congress for approval, in such a way that it enters into force not later than 10 September 1993.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

A. Education, including vocational training and guidance (art. 28)

158. In conformity with the Convention, Honduras recognizes constitutionally that:

(a) Education is an essential function of the State for the conservation, promotion and diffusion of culture;

(b) Education must project its benefits on society;

(c) National education shall be secular;

(d) It shall be based on the essential principles of democracy;

(e) It shall promote in the pupils a deep sense of being Honduran;

(f) It shall be directly linked with the process of the country's social and economic development;

(g) The State has the obligation to develop the basic education of the people, to which end it must create the necessary administrative and technical organizations within the Department of Public Education;

(h) The eradication of illiteracy is a prime task of the State;

(i) It is the duty of all Hondurans to cooperate in the eradication of illiteracy;

(j) The State recognizes and protects the freedom of research, learning and teaching;

(k) The levels of formal education shall be determined, organized, directed and supervised by the Department of Public Education, apart from the higher level which is the sphere of the National Autonomous University of Honduras (UNAH);

(l) The State shall sustain and promote the education of the handicapped;

(m) The State shall encourage the development of out-of-school education by means of libraries, cultural centres and every kind of dissemination; and

(n) The owners of estates, factories and other production centres in rural areas shall be obliged to establish basic-education schools (primary) for the benefit of the children of their permanent workers, provided that the number of children of school age exceeds 30 or, in frontier areas, exceeds 20.

159. Through the set of secondary rules in the Organization of Education Act, the Honduran State provides a framework for its educational function, developing the constitutional mandate. We thus find, among other legislative measures, the following:

(a) Education is an essential State function for the conservation, promotion and diffusion of culture, and must offer the maximum opportunities for its acquisition, without discrimination of any kind;

(b) Education is a right of every inhabitant of the Republic and the State has the obligation to supply it in the fullest and most adequate way;

(c) The State shall establish school services of care and protection for pupils lacking the resources that would enable them to enjoy the benefits of education;

(d) The State shall grant scholarships to engage in middle-level and higher studies for the teaching profession and of a vocational nature, whether inside or outside the country;

(e) The education given in the official establishments shall be free of charge at all levels;

(f) The education given in official establishments shall be fully paid for by the State and, at its primary level, is mandatory;

(g) The parents and representatives of minors of school age shall be responsible for meeting this obligation;

(h) The State shall provide the means, to the extent of its duties, to enable this to be done;

(i) The age limits for compulsory primary education shall be established by regulation;

(j) The Department of Public Education, for the purpose of ensuring the fullest compliance with this obligation, shall establish and maintain special schools and services for those suffering from physical or mental defects or who, by reason of sickness, abandonment or irregular behaviour, cannot attend an ordinary primary school;

(k) For the latter cases, the executive shall have the obligation to establish and pay for rehabilitation and social readaptation centres; and

(l) The educational and vocational orientation for all levels of the school system shall be established, in order to stimulate and guide the integral development of the pupil for the purpose of assisting him or her in his or her educational, moral, civic and social formation, through psycho-pedagogic treatment.

160. Although, in line with article 28 of the Convention, Honduras has most of the measures that must be implemented around the right to education for all, it has not succeeded in achieving the optimum use of them for the following reasons:

(a) The Department of Public Education lacks the financial resources to that end, to such an extent that the primary and secondary schools lack basic equipment and, in many cases, the necessary teaching staff. This means that the measures concerning technical supervision and disciplinary systems are implemented to an extent of 10 per cent only; and

(b) Because, although in theory higher education is accessible to all, not everybody can accede to it, despite the fact it is free of charge, due to the poverty engulfing 70 per cent of the population. Those who enter the university do so, not on the basis of capacity, but by simple payment of about US$ 20 per term, as the sole requirement for admission. This occasions for the State a non-rational use of the 6 per cent of its national budget which is constitutionally assigned to the National Autonomous University of Honduras, which is more than eloquent if we look at the significant figures of failed candidates in every academic year and the considerable number of them that never take degrees.

161. There is, however, the political will to ensure that higher education is accessible to all, on the basis of capacity, by whatever means may be appropriate, as conceived by the Convention.

B. Aims of education (art. 29)

162. Article 151 in chapter VIII "On Education and Culture" of Title III "On Declarations, Rights and Guarantees" of the Constitution determines the aims that education must pursue and provides that:

(a) Education is an essential function of the State for the conservation, promotion and diffusion of culture;

(b) National education shall be based on the essential principles of democracy; and

(c) Deep patriotic sentiments shall be inculcated into the pupils and education must be linked with the economic and social development of the country.

163. Article 1 of the Organization of Education Act is a precept that gives a full account of what education means for Honduras, when it provides that:

(a) Education is a formative process; and

(b) Influences the life of the human being for the purpose of achieving the full development of his or her personality and making him or her a citizen suitable for individual and collective life and, indeed, making him or her a factor for the development of the country.

164. Chapter II of the same Act entitled "On the Ends of Education", indicates as such the following:

(a) To form citizens who love their country and are aware of their duties and rights, with a deep feeling of responsibility and respect for human dignity;

(b) To form citizens suitable for building and maintaining a democracy which equitably reconciles the interests of the individual with those of the community;

(c) To form citizens capable of stimulating feelings of solidarity and understanding among the nations;

(d) To train citizens in the value of work as a fundamental duty for the promotion of the country's economic life;

(e) To secure for Hondurans a training which prepares them to make use of natural resources, science and technology for the integral development of the nation; and

(f) To form citizens capable of contributing to the conservation of health and the spiritual formation of the human being and of society.

165. Legislatively speaking, the measures are implemented in harmony with the Convention but, to be fully effective, administrative, curricular and teaching measures are needed to implement them which have been lost in practice. Moreover, the legal concept of supervision must be reviewed and strengthened to enable it to fulfil its purposes which are:

(a) To stimulate the qualitative and quantitative improvement of education around the objectives assigned to the country's school system, by guiding, coordinating and assessing it; and

(b) To contribute to the unity of the national school system by integrating to that end all the various levels and extending its action to all the education and service centres in the branch.

C. Leisure, recreation and cultural activities (art. 31)

166. Article 123 in the chapter "On the Rights of the Child" of the Constitution recognizes that every child shall have the right to grow and develop in good health, to which end he must be given the opportunity and have the right to enjoy recreation and sports.

167. The Department of Education has, within its organizational structure, two subordinate bodies entitled: Directorate General of Physical Education and Sports and Directorate General of Artistic Education.

168. In all programmes of preschool, primary and secondary education, measures are implemented to promote and develop sporting activities of various kinds as well as artistic expression and vocation and all kinds of cultural and recreational activities. However, for their qualitative and quantitative improvement, significant budgetary assistance is needed.

169. Other measures concerned with these rights of the child are to be found in various programmes being carried out by institutions such as the National Social Welfare Board and the armed forces of Honduras. In the first case, these form part of the compulsory prevention and rehabilitation programmes designed for minors in an irregular situation and, consequently, the activities concerned are systematically implemented. The armed forces programmes take place in the context of civic-recreational events in communities in support of the primary and secondary schools.

170. There is cooperation in this area, though not in a systematic way, with the non-governmental organizations, whose participation could be used to much greater effect if we succeeded in establishing a coordination regime so as to make rational use of means and resources, avoiding duplication and even multiplication of efforts.

171. We are unable to state precisely how far this private cooperation extends, because we do not have the necessary information. All that we can say, in connection with the right to leisure, recreation, play and the various recreational activities appropriate to their age, the children in the preschool, primary and secondary establishments at any rate enjoy cultural and artistic activities, though not to the variety and extent that the large child and juvenile population requires, still less with the appropriate facilities.

172. As for the inmates of governmental and non-governmental custodial centres, hostels, etc., the minors in question engage in the necessary recreational activities as part of the process of prevention and rehabilitation, to the extent of the facilities available.

VIII. SPECIAL PROTECTION MEASURES

A. Children in situations of emergency (art. 22 and 39)

173. Within this context and as required by the guidelines of this report, we shall refer to:

1. Refugee children (art. 22)

174. Honduras, a country in the Central American region which is located in the centre of three countries affected by armed conflicts, with extensive and readily accessible frontiers, has been affected socially and politically by the

displacement of entire communities which have entered the national territory fleeing the convulsions in their respective countries, namely, El Salvador, Nicaragua and Guatemala.

175. Despite its difficult economic situation, Honduras has been faithful to its recognized tradition of hospitality and has supplied a refuge for enormous numbers of persons displaced by war, an additional social burden which it nevertheless accepted even before receiving any international humanitarian cooperation.

176. This approach is guaranteed for the future, the more so as Honduras is a State party to international conventions and agreements, to which it has subscribed in good faith and with respect to which recent and past history constitute a living testimony of the responsibility with which Honduras has complied faithfully with its obligations.

2. Children affected by an armed conflict (art. 38) including their physical and psychological recovery and social reintegration (art. 39)

177. With respect to the provisions of article 38, paras. 1, 2, 3 and 4, of the Convention, we are able to state that:

178. No person under the age of 15 years, or indeed of 18 years, has taken part in any hostilities, at least as far as is known to the State.

179. In Honduras, military service is compulsory for persons who have attained the age of 18 years, in conformity with current legislation.

180. By way of exception, persons younger than 18 years of age may possibly have been recruited during the course of operations to clear up vagrancy and delinquency. The minors thus recruited were returned to their parents, at the request of the persons concerned, while others were confined at the request of their parents or guardians, or even of the minors themselves.

181. Honduras has been mindful of its obligation to protect the civil population in armed conflicts, with particular reference to children. This has always been so and will also be so in the future.

182. In connection with article 39 of the Convention, this work has been carried out jointly with UNHCR, non-governmental organizations and other entities of international cooperation, to the extent that conditions have permitted.

B. Children in conflict with the law (art. 37, 39 and 40)

1. On the administration of juvenile justice (art. 40)

183. In keeping with article 40, paragraph 1, of the Convention, Honduras recognizes the right of every child in conflict with the law to be treated in a manner consistent with the promotion of his or her sense of dignity and worth which reinforces his or her respect for the human rights and fundamental freedoms of others. In addition, Honduras recognizes that it must take into account the child's age and the desirability of promoting his or her reintegration into society and the need for the child to assume a constructive

role in his or her community and in society in general, for his or her own benefit also.

184. In keeping with the provisions of article 40, paragraph 2, subparagraph (a), of the Convention, the Honduran State maintains, in connection with punishment, the general principle of criminal law that there is "nullum crimen, sine lege" (no offence without a law) as contained in articles 1, 2 and 11 of the Criminal Code.

185. As for subparagraph (b) (i), Honduras recognizes, as an individual right that is constitutionally guaranteed, that everyone is presumed innocent until declared guilty by the competent authority (article 89 of the Constitution).

186. As for subparagraphs (ii), (iii), (v), (vi) and (vii), there is a legal and procedural order in the country which is identified as the "Minors (Jurisdiction) Act" and this, although it is not very well structured, has served to date in one way or another as the legal protection that must be extended to minors in a situation of conflict with the law.

187. The Act provides inter alia that:

(a) It shall apply to persons having attained the age of 12 years but not that of 18 years who have committed acts that the criminal laws describe as offences or misdemeanors (art. 1.1);

(b) It shall apply for protective purposes to: (i) persons of irregular conduct, (ii) to those who are morally and materially abandoned or are victims of exploitation or ill-treatment by their parents or guardians and (iii) those who in one way or another are in an irregular situation (art. 1.2); and

(c) The criminal court which has jurisdiction concerning offences committed by persons over 18 years of age in which persons under 18 years of age are implicated shall prepare for a trial of the former through common proceedings and, in respect of the latter, shall prepare the corresponding information in accordance with the provisions of this Act (art. 11).

188. With respect to subparagraph (iv), article 88 of our Constitution states that "no one shall be compelled to give testimony against himself or against his parents. Any testimony thus acquired shall be null and void and those responsible for acquiring it shall be subject to the corresponding penalties".

189. In conformity with article 40, paragraph 3, of the Convention, Honduras has - as reported in connection with paragraph 2 - systems, procedures, authorities, officials and institutions specifically applicable to children in conflict with the law. As regards legislative, legal and administrative measures, the executive hopes to have in the near future a preliminary draft of the Minors Code which, like every integral set of rules, will consist of two large volumes: the one containing the substantive rules that will develop in detail the legal protection that the Honduran State is obliged to provide for minors in keeping with the Convention, and the other containing the additional or procedural rules without which the legislative measures would be positive and in being but lacking in reality in that they would have no tools for their full legal application and effectiveness.

190. As regards article 40, paragraph 3, subparagraph (a) of the Convention, article 23 in chapter I, "Causes of Imputability", of Title III, "Causes that

Exempt from Liability", of the Honduran Criminal Code establish that the following persons are not imputable: (1) persons under 12 years of age; (2) any person lacking the capacity to understand the illegal nature of the deed, because of mental illness, incomplete psychic development, retardation or transitory mental derangement; and (3) deaf mutes who are incapable of appreciating the illegal nature of the act.

191. As for the age at which persons may be found guilty of offences or misdemeanors, it would seem from the contents of the Criminal Code that Honduras is not in harmony with the Convention which speaks of "every child" in the various provisions which set forth the rights of the minor. This is especially true of article 1 of the Convention which defines the concept "child" as meaning every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

192. However, it is important to point out that, although the minimum age below which it is a legal presumption that children have no capacity to infringe the Criminal Law is 12 years of age, the age segment between 12 and 18 is not submitted to ordinary law but to the special law of the Minors (Jurisdiction) Act according to article 1, paragraph 1, of that Act. As regards article 40, paragraph 3, subparagraph (b), and paragraph 4 of the Convention, Honduras has various dispositions of the kind mentioned to ensure the general welfare of minors in conflict with the law. It is only logical, however, that, given the economic circumstances of the country, these measures though implemented qualitatively are not implemented quantitatively as well as they might be. They are not ideal for financial reasons, which have an impact on all aspects of the treatment.

193. As for the representation of minors for their defence and protection, this is the responsibility of the minors' procurators. These minors' procurators, who form part of the organizational structure of the judiciary, are attached to the juvenile courts. In places where there are no juvenile courts, the attorneys of the departmental or sectional courts act as minors' procurators (art. 22).

2. Children deprived of liberty, including any form of detention, imprisonment or placing in custody (art. 37, paras. (b), (c) and (d)).

194. In its chapter III, "On Individual Rights", the Constitution states that any person deprived of liberty shall be treated with respect due to his condition as a human being and that personal freedom is inviolable and may be suspended or restricted, but only temporarily and only in accordance with the law.

195. In its chapter IV, "On the Rights of the Child", the Constitution states that no person under 18 years of age may be admitted to any prison or penitentiary. This guarantees that minors deprived of liberty will be separated from adults and will be held primarily in custodial centres while the magistrate considers the case and will later be consigned to reeducation centres in which minors are rehabilitated through a special educational system in which contact with their families is maintained through correspondence and visits.

3. The imposition of punishment on children, particularly the ban on capital punishment and life imprisonment (art. 37, para. (a))

196. The Honduran Criminal Code declares that persons under 12 years of age are not imputable and the Minors (Jurisdiction) Act sets forth special measures for persons over 12 but under 18 years of age who engage in illegal actions or omissions that are punishable by the law. Article 122 of the Constitution states that "no person under 18 years of age shall be admitted to any prison or penitentiary".

197. Honduran law thus does not contemplate the imposition of any punishments on persons under 18 years of age, still less capital punishment or life imprisonment which, in fact, have been abolished even for adults under article 66 of the Constitution, which bans the death penalty.

198. Article 38 of the Criminal Code specifically establishes the classes of punishment existing in Honduras as follows:

(a) The main penalties are long-term imprisonment, general disqualification, relative disqualification, short-term imprisonment and fines; and

(b) As accessory punishments there are deprivation of civil rights and confiscation.

199. The most degrading punishments imposed in Honduras are those of penal servitude and long-term imprisonment. There is, however, no life imprisonment.

4. Physical and psychological recovery and social reintegration (art. 39)

200. As regards this right, a report has already been given in section I "Abuse and neglect including physical and psychological recovery and reintegration" of chapter V "Family Environment and Alternative Care" as well as in section B. "Children in conflict with the law", parts 1 and 2, of this chapter "Special protection measures".

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration (art. 32-36 and 39)

1. Economic exploitation, including child labour (art. 32)

201. Honduras has legislative measures to deal with this situation such as the following: article 124, in the chapter on the Rights of the Child of the Constitution states:

(a) That every child must be protected against every kind of ... exploitation, - that he or she shall not be subject to any kind of slavery;

(b) He or she shall not work before attaining an adequate minimum age;

(c) He or she shall not be occupied or employed in work that could be harmful to his or her health or education or could impede his or her physical, mental and moral development;

(d) The use of minors for begging is prohibited; and

(e) The law shall indicate the penalties for violations of these provisions or instructions.

202. In addition to these rules, article 128 in chapter V, "On Work", of the Constitution orders that:

(a) Special protection be established for women and children;

(b) Persons under 16 years of age and persons over that age who are engaged in study shall not be employed in work of any kind, without prior authorization of the Ministry of Labour and Social Welfare if it regards this as indispensable for the child's subsistence or that of his or her parents or siblings and provided it does not interfere with compulsory education; and

(c) The working day for persons under 16 years of age shall not exceed six daylight hours and the working week shall not exceed 30 daylight hours.

203. At the secondary level, the Labour Code, interpreting the constitutional instruction, provides that:

(a) Persons having attained 16 years of age have the capacity to conclude individual employment contracts;

(b) Persons under 16 years of age need written and officially certified authorization from their legal representatives - parents or guardians - or, in its absence, from the Inspector General of Labour or the local mayor, without prejudice to the provisions of the Minors (Jurisdiction) Act;

(c) Such authorization is given after a careful investigation to ensure that it is in the best interests of the child;

(d) Once the authorization is given, the minor is entitled to receive his or her wages personally and to exercise all the relevant legal actions;

(e) An employer who establishes a work relationship with an unauthorized minor is not thereby exempted from his obligations as an employer, without prejudice to the fact that the relevant labour authority may, ex officio or on receipt of an application, order the cessation of the relationship and impose on the employer the established fine;

(f) The work of minors and of women must be adapted to their ages and physical conditions and without harm to their intellectual and moral development;

(g) Women and persons under 16 years of age may not perform work described by the Labour Code, Health Code and Hygiene and Safety Regulations as unhealthy or dangerous;

(h) Persons under 16 years of age are forbidden to engage in night work or extraordinary working hours;

(i) Minors must not work in clubs, circuses, cinemas, bars, cafés, off-licenses and houses of ill-repute;

(j) In the course of the ordinary working day, women and minors shall enjoy a two-hour intermediate rest period;

(k) In vocational schools and social welfare and assistance institutions, the work of minor pupils must be proportionate to their physical strength, mental state and abilities and intended only for vocational training and not exploitation purposes;

(l) In no circumstances may the primary education, to which every child is compulsorily entitled, be neglected; and

(m) Males under 16 years of age and female minors shall not be employed in the instruction, issue, printing, photography or sale of drawings, engravings, pictures, emblems or images that can be regarded as contrary to morality, public order or proper behaviour.

2. Abuse of drugs and/or narcotics (art. 33)

204. In its chapter on health, our Constitution orders that the law shall regulate the production of, trading in, possession, donation, use and marketing of psychotropic substances, which may be destined only for health services or for scientific experiments under the supervision of the competent authorities.

205. Since 1990, the Honduran Institute for the Prevention of Alcoholism and Drug Addiction (IHADFA) has been operating, with its organizational act and regulations. It is a governmental unit which is doing work mainly of a preventive type in coordination with the Departments of Education and Public Health, the National Social Welfare Board and the United Nations.

3. Sexual exploitation and sexual abuse (art. 34)

206. The Honduran Criminal Code classifies as sexual abuse of minors actions such as those given below.

207. Carnal relations of a man with persons of either sex by the use of adequate physical force or by the threat of serious or immediate harm constitutes the offence of rape. In addition, it is considered to be rape if the victim is under 12 years of age. The perpetrator of such an offence shall be punished by imprisonment for a term of three to nine years.

208. Other sexual offences typified in the Criminal Code are, with the corresponding penalties:

(a) Acts of lechery committed against any person shall be punished by imprisonment for a term of two to four years;

(b) Rape of a virgin between 12 and 21 years of age by abuse of authority or trust shall be punished by imprisonment for a term of two to four years; if deception is used, it shall be punished by imprisonment for one to three years;

(c) Any other indecent abuse, committed in similar circumstances, shall incur the same penalties;

(d) The abduction of a female between 12 and 21 years of age, with indecent intentions, even with the consent of the person concerned, shall be

punished by rigorous imprisonment for a term of six months to four years; if the victim is under 12 years of age, the penalty shall be a term of four to six years' imprisonment;

(e) Anyone who, by abuse of authority or trust, habitually promotes or facilitates the prostitution or corruption of adult females, with or without desire for gain, shall be punished by imprisonment for a term of two to five years, increased by one third if the passive victim of the offence is a minor;

(f) Anyone who prevents persons from abandoning prostitution or corruption shall incur the same penalties as those indicated in the previous paragraph;

(g) Facilitating or promoting the entry into the country of minors of either sex for the purpose of exercising prostitution or the exit of such persons for the purpose of exercising prostitution abroad shall be punished by imprisonment for a term of three to five years; and

(h) Those persons who cooperate as accomplices in the perpetration of the offences indicated above, making use of the authority, trust or responsibility that is theirs as senior relatives, tutors, guardians, teachers or the like, shall incur the same penalties as the perpetrators.

4. Other forms of exploitation (art. 36)

209. There are no specific legislative rules at the secondary level but Title III, "On Declarations, Rights and Guarantees", of the Constitution provides that "The State has the obligation to protect the child against all forms of abandonment, cruelty and exploitation." Since, in our procedural legislation, the principle of analogy prevails, all acts or omissions which signify exploitation can be punished.

5. Sale, traffic and abduction (art. 35)

210. See chapter V, section H, of this report.

D. Children belonging to a minority or an indigenous group (art. 30)

211. The Honduran State rejects every form of discrimination. Consequently, our indigenous children are covered for all the purposes of the Convention by the definition of the child contained in its article 1.